

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

Avista Corporation
Bonneville Power Administration,
Idaho Power Company,
Nevada Power Company,
NorthWestern Energy, L.L.C.,
PacifiCorp,
Portland General Electric Company,
Puget Sound Energy, Inc.,
Sierra Pacific Power Company,
British Columbia Hydro and Power Authority

Docket Nos. RT01-35-005
and RT01-35-007

DECLARATORY ORDER ON REGIONAL
TRANSMISSION ORGANIZATION PROPOSAL

(Issued September 18, 2002)

I. Introduction

1. In this order, we address the Stage 2 Filing and request for a declaratory order filed by Avista Corporation (Avista), Bonneville Power Administration (Bonneville), Idaho Power Company (Idaho Power), NorthWestern Energy, L.L.C., (NorthWestern) [formerly Montana Power Company,] Nevada Power Company (Nevada Power), PacifiCorp, Portland General Electric Company (PGE), Puget Sound Energy, Inc. (Puget), Sierra Pacific Power Company (Sierra Pacific), and joined by British Columbia Hydro and Power Authority (B.C. Hydro) (collectively, Applicants), concerning their proposal to form a regional transmission organization (RTO) known as RTO West.¹

¹Bonneville is voluntarily participating in the RTO West proposal as a concurring party. B.C. Hydro, a non-jurisdictional Canadian entity, has joined in the Stage 2 filing, although Canadian participation in RTO West is still being negotiated.

2. The RTO West conceptual proposal that we address in this order is the result of a lengthy and intensive discussion and negotiation among all stakeholders in the Northwest. The Commission applauds this productive dialogue among the parties to develop an independent transmission provider for the region. As discussed in this order, the hard work of all parties has resulted in a proposal that, with some modification and further development of certain details, will satisfy not only the Order No. 2000 requirements,² but also can provide a basic framework for a standard market design for the West.

3. The Commission has recently issued for public comment a Notice of Proposed Rulemaking relating to standard electricity market design.³ Because there is broad overlap of issues between that proposal and this filing, the Commission will take the opportunity here to provide a comparison between RTO West's filing and the proposed rule. We look at this comprehensive filing as both informing and being informed by the proposed rule.

4. Details of certain elements of the RTO West proposal that also are elements of our standard market design proposal are still under development by the parties, such as congestion management and scheduling protocols, facilities, and cataloging of transmission rights. Many of these details will need to consider the existing contractual relationships among parties and the operating characteristics of extensive hydroelectric generating resources in the Northwest, whose operation is coordinated through international treaty and other agreements and with the operation of thermal and nuclear resources in the region. In order that these requirements are fully understood and appropriately incorporated into the structure of RTO West operation, in this order we direct that additional discussions be held among stakeholders through the RTO West Regional Representatives Group (RRG) process and through technical conferences with Commission staff to develop the remaining aspects of the RTO West proposal.

²Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 30,092 (2000), aff'd sub nom. Public Utility District. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

³Remedying Undue Discrimination through Open Access Transmission and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 Fed. Reg. 55, 452 (Aug. 29, 2002), FERC Stats. & Regs. ¶ _____ (2002)(Standard Market Design NOPR).

Among other things, this order:

- approves the majority of the Stage 2 market design proposal;
- approves the governance proposal;
- approves the license plate pricing, including the length of the transition period;
- approves, with modification, the congestion management proposal reflecting the use of locational pricing and financial options to hedge congestion charges;
- approves the use of catalogued transmission rights with voluntary contract conversion;
- approves, with modification, the planning and expansion proposal;
- approves the framework for interregional coordination;
- rejects a provision of the proposed RTO West Transmission Operating Agreement (TOA), which provides that the TOA would automatically govern when conflicts exist with the RTO West Tariff;
- defers addressing most of the provisions of the proposed TOA until the RTO West Tariff is filed;
- directs Applicants to submit in a compliance filing within 120 days of the date of this order (1) an RTO West Tariff, and (2) a list of their transmission facilities together with the proposed disposition of each facility (e.g., whether under RTO West control for operational purposes, pricing, interconnection and planning) and the reason for such disposition;
- directs modifications to the proposal for tariff administration and design;
- requires Applicants to develop, through a stakeholder process, standards for interconnection for RTO West as a whole, to be administered solely by RTO West for all interconnection requests;

- approves the proposal, with certain modifications, for the establishment of a market monitor for RTO West; and
- determines that Applicants may propose limited liability provisions when they file the RTO West Tariff.

II. Background

A. Stage 1

5. On October 16, 2000, as supplemented on October 23, 2000, Applicants filed a general description of the proposed characteristics and functions of RTO West, including the governance structure, the transfer charges proposal, and the allocation of firm transmission rights (FTRs) by RTO West. They requested a declaratory order concerning whether the RTO West proposal satisfies the requirements of Order No. 2000.⁴

6. On December 1, 2000, a subset of Applicants (Concurring Utilities)⁵ filed a proposed amendment to the October 23, 2000 filing, including a revised TOA and an Agreement to Suspend Provisions of Pre-Existing Transmission Agreements. Also on December 1, 2000, another subset of Applicants (PGE, Nevada Power and Sierra Pacific) filed a separate proposed amendment to the same agreements.⁶

7. In the April 26 Order, the Commission granted, on a preliminary basis and with conditions and modifications, Applicants' request for a declaratory order.⁷ In so doing,

⁴See Avista Corp., et al., 95 FERC ¶ 61,114 (2001) (April 26 Order), order on reh'g, 96 FERC ¶ 61,058 (2001) (July 12 Order), clarified, 96 FERC ¶ 61,265 (2001) (collectively, Stage 1 Orders).

⁵Concurring Utilities are Avista, Bonneville, Idaho Power, NorthWestern, PacifiCorp and Puget.

⁶PGE, Nevada Power and Sierra Pacific declined to join in Concurring Utilities' proposed amendment, because of disagreements with Concurring Utilities on the appropriateness and nature of an export fee to be applied to the transmission of energy exported from RTO West.

⁷The April 26 Order also granted, on a preliminary basis and with conditions and modifications, the request for a declaratory order by the TransConnect Applicants, a subset of the RTO West Applicants. As noted above, TransConnect's Stage 2 filing is
(continued...)

the Commission provided preliminary guidance on a limited number of issues presented by the Stage 1 filing, *i.e.*, governance, scope and configuration, and liability of RTO West. The April 26 Order further stated that, except as noted therein, the Commission would address Concurring Utilities' December 1, 2000 amendment in a future order.⁸

8. Additionally, the April 26 Order directed Applicants to file a status report by December 1, 2001, detailing, among other things: resolution of seams issues; plans for participation in RTO West by Canadian entities; a framework for formation of a West-wide RTO; and a timetable for achieving a West-wide RTO.⁹ On December 1, 2001, subsets of the U.S. Applicants (together with B.C. Hydro, which joined the RTO West development effort as a filing utility on July 17, 2001) filed two separate status reports: (1) Avista, Bonneville, B.C. Hydro, Idaho Power, NorthWestern, PacifiCorp, and Puget filed a status report concerning RTO West development; and (2) Nevada Power, PGE and Sierra Pacific filed a status report concerning the framework for formation of a West-wide RTO and resolution of seams issues.

B. Stage 2 Filing

9. On March 29, 2002,¹⁰ Applicants submitted their Stage 2 filing. They request that the Commission confirm its previous preliminary determinations concerning the proposed governance structure and the proposed scope and configuration of RTO West, and find that the RTO West proposal fulfills all of the characteristics and functions required for status as an RTO under Order No. 2000. Applicants' Stage 2 filing includes: (1) a revised TOA; (2) amended Bylaws; (3) lists of transmission facilities that Applicants propose to include in RTO West; and (4) descriptions of proposals for RTO West's initial pricing methodology, congestion management system, ancillary services framework, market monitoring plan, and planning and expansion process. Their filing also includes

⁷(...continued)

addressed in a separate order being issued concurrently with this order.

⁸Because PGE, Sierra Pacific and Nevada Power are parties to the Stage 2 Filing, we consider the Stage 1 pricing proposal filed on December 1, 2000 to be superseded by the current proposal.

⁹95 FERC at 61,343.

¹⁰Applicants submitted an errata filing on April 22, 2002.

draft Scheduling Coordinator¹¹ and Paying Agent agreements.¹² On June 28, 2002, Applicants submitted a Detailed Implementation Plan (Implementation Plan) and a Description of General Approach to Public Involvement in Post-Stage 2 Filing Activities.

10. Applicants explain that, after obtaining a declaratory order, much work will remain to achieve a fully operational RTO West, including: the development of an RTO West tariff; the development of the market design;¹³ and obtaining state, federal and individual company's board of directors approvals. Applicants believe that Bonneville's participation is critical to the viability of RTO West as an RTO. Once Bonneville's participation is ensured and the other Applicants have obtained the necessary approvals, Applicants will each execute a TOA. Applicants intend to implement RTO West as long as at least two Applicants with transmission systems that are contiguous with Bonneville's system have received the necessary approvals.

11. Upon execution of the TOA, those Applicants that are required to file with the Commission under sections 203 and 205 of the Federal Power Act (FPA)¹⁴ will proceed with those filings. Applicants also intend to file to modify their open access transmission tariffs (OATTs) to provide a one-time opportunity, before RTO West begins commercial operations, for transmission customers to exercise rollover rights with respect to their existing transmission service agreements.

III. Notice of Filing and Pleadings

¹¹Under the draft Scheduling Coordinator Agreement, the function of a Scheduling Coordinator is to schedule transmission services and ancillary services on the RTO West Controlled Transmission Facilities and any other transmission facilities over which RTO West is authorized to schedule service under the RTO West Tariff. Stage 2 Filing, Attachment J1.

¹²We will address proposed Scheduling Coordinator and Paying Agent agreements when Applicants file the RTO West tariff.

¹³This process will include negotiations for Bonneville's participation in the market power or price mitigation programs of RTO West on the same terms and conditions as other Participating Transmission Owners (PTOs), but in a manner consistent with Bonneville's statutory and environmental requirements.

¹⁴16 U.S.C. §§ 824b, 824d (2002).

12. Notice of Applicants' Stage 2 filing was published in the Federal Register, 67 Fed. Reg. 18,191 (2002), with motions to intervene or protests due on or before April 29, 2002. The Commission extended the due date for motions to intervene or protests to May 30, 2002. Timely motions to intervene, protests and comments and a motion to file late comments were filed by the parties listed in the Appendix to this order. On June 24, 2002, Applicants filed an answer. On June 25, 2002, Avista filed reply comments. On July 9, 2002, UAMPS filed an answer to Applicants' answer. On July 12, 2002, Northwest Industrial Customers filed a motion to strike Applicants' answer and Avista's reply comments. On July 17, 2002, Northwest Industrial Customers filed an amendment to their protest in response to Applicants' answer.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁵ the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding.¹⁶ Further, we will grant the motion to file comments out of time in view of the party's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Further, although our Rules of Practice and Procedure generally prohibit answers to protests and answers to answers, we will permit Applicants' answer, Avista's reply comments and UAMPS' answer, because the pleadings have aided us in understanding the issues. By our acceptance of these pleadings, the Northwest Industrials motion to strike is denied.

B. Substantive Matters

¹⁵18 C.F.R. § 385.214 (2002).

¹⁶A number of commenters were previously granted party status when they intervened in response to the Stage 1 filing.

RTO Characteristic No. 1: Independence¹⁷

The RTO must be independent of any market participant.

14. The April 26 Order concluded that RTO West's proposed governance structure, with certain modifications to the Articles of Incorporation and Bylaws, satisfied the independence standard set forth in Order No. 2000.¹⁸ The Commission directed Applicants to submit, as part of their Phase 2 filing, certain revisions to the RTO West TOA and Bylaws as, discussed below.

1. Compliance Filing for April 26 Order

15. Applicants propose certain amendments to the Articles of Incorporation and Bylaws for RTO West to comply with the April 26 Order requirements that RTO West: (1) provide for waiver or reduction of membership fees for legitimate public interest groups that wish to be members of RTO West;¹⁹ (2) eliminate the restriction on certain members of the Transmission-Dependent Utilities Class from voting along with their fellow class members in filling four of the Trustee Selection Committee positions allocated to that class;²⁰ and (3) provide that, if there are no members of the Large Retail Customer Class acting as Scheduling Coordinators, all Trustee Selection Committee positions allocated to the Large Retail Customer Class may be elected by representatives of that class that are not Scheduling Coordinators.²¹ No protests or comments were filed regarding these modifications.

16. We find that Applicants have satisfactorily complied with the Commission directives in the April 26 Order regarding modification of the proposed Bylaws and Articles of Incorporation, and these modifications are approved.

¹⁷Except for governance, scope and configuration, and proposed liability of RTO West, issues concerning the characteristics and functions of RTO West are presented for the first time by Applicants' Stage 2 filing.

¹⁸The Standard Market Design NOPR adopts the Order No. 2000 independence requirements for an Independent Transmission Provider.

¹⁹See 95 FERC at 61,331.

²⁰*Id.* at 61,327-28

²¹The Commission also directed Applicants to revise the TOA regarding Section 205 filing rights, which is discussed later in this order.

2. Proposed Changes to the RTO West Bylaws

a. Alternative Dispute Resolution Process (ADR Process)

I. Applicants' Proposal

17. Applicants propose to replace the dispute resolution provisions included in their Stage 1 filing with provisions that were developed in collaboration with interested stakeholders. Section 11.6 of the amended Bylaws for RTO West provides that RTO West shall endeavor to include in any RTO West tariff (and to make all terms of any RTO West tariff subject to) an ADR process consistent with Exhibit C of the Bylaws. The ADR Process will apply to all disputes that arise under the Bylaws and any contracts and agreements to which RTO West is a party, except as limited by law (including the rights of any party to file a complaint with the Commission under the FPA). The ADR Process of the Bylaws also establishes procedures for a "Party" to initiate arbitration, including: only a "party" may initiate arbitration; the parties will select a three-arbitrator panel (Arbitrator); the Arbitrator shall have power to determine whether a dispute is subject to arbitration pursuant to the ADR provisions; RTO West, any Canadian grid operating entity, or any Eligible Customer not named as a party may apply to intervene in the arbitration as a party or "Participant;" the Arbitrator shall issue written reasons for the award unless the parties agree to "baseball" style arbitration; the Arbitrator's decision is by majority vote; and a party may appeal an award to the Commission, or where the Commission does not have jurisdiction, to a court of competent jurisdiction.

18. Applicants state that Bonneville remains concerned about the effectiveness of its appeal rights to the courts when the Commission lacks jurisdiction to review an arbitration award. According to Applicants, this is likely to occur, for example, when disputes over rights in pre-existing Bonneville transmission contracts occur in the contract conversion process. Bonneville is concerned that the lack of a meaningful avenue of appeal effectively establishes binding arbitration when the Commission lacks jurisdiction. Applicants further state that Bonneville reserves the right to negotiate modifications to the TOA before execution if necessary to secure an adequate appellate route.

ii. Comments

19. NW Energy Coalition alleges that the proposed ADR process fails to protect the public interest because it excludes state regulators, retail consumers (except Eligible

Customers) or their associations, and public interest groups from becoming "Parties" in disputes. Instead, these entities must prove to the Arbitrator that they have an "interest" and, if successful, may become only "Participants" (under the Bylaws) with fewer procedural rights. NW Energy Coalition asserts that its exclusion from the ADR process would eliminate its ability to hold RTO West and the PTOs accountable, or to protect its rights in numerous situations involving, for example, allocation of costs and transmission rights and least-cost planning decisions

20. Public Power Council asserts that the TOA's ADR provisions establish "classes" of arbitration. It argues that this bifurcation is discriminatory, because PTOs and RTO West have greater arbitration rights than do existing contract customers.

21. UAMPS argue that substantive aspects of the TOA's ADR process (§ 20) must be modified to ensure that third-party rights are protected. First, they contend that disagreements over how RTO West exercises its core functions should not be subject to ADR. According to UAMPS, the TOA specifically allows a PTO to use the ADR process to challenge RTO West's decisions on issues like the provision of ancillary services (§ 10.3.2), generator interconnection standards (§ 20.7.2), maintenance performance plans for RTO West Controlled Transmission Facilities (§ 11.3), and planning and expansion (§ 14.7). UAMPS contend that the TOA's ADR process may apply to all RTO decisions, including those regarding congestion management, facilities inclusion and planning. They argue that the Commission held in TRANSLink²² that transmission owners may not use the ADR process to limit the RTO's ultimate authority over its planning and expansion functions and that this principle applies to all core RTO functions. Second, they contend that certain provisions would deny other interested parties the right to invoke the ADR process or intervene in proceedings. They note only PTOs and the RTO have the right to initiate arbitration (§ 20.2.1) and § 20.3.5.1 limits the right to intervene in an arbitration proceeding to RTO West and any PTO not named a party.

iii. Commission Determination

22. Given the need for RTO West and the PTOs to have a mechanism for addressing disputes among themselves under the TOA, inclusion of an ADR process in the TOA is reasonable. However, it is premature to address whether entities that are not parties to the

²²See TRANSLink Transmission Company, L.L.C., et al., 99 FERC ¶ 61,106 (2002)(TRANSLink).

TOA will have sufficient ADR rights. For example, although some of Applicants' responses to intervenors' concerns refer to the ADR process under the draft RTO West Tariff, Applicants have not filed the RTO West Tariff. We will address the ADR issue further when Applicants file a proposed RTO West Tariff.

b. Seating of the Board of Trustees (Board)

I. Applicants' Proposal

23. Under Section 6.3.2 of the originally proposed RTO West Bylaws, for the first election of the Board of Trustees (Board), the executive search firm is required to assemble a slate of 15 qualified candidates for the nine open positions. For subsequent elections of Trustees, the executive search firm must provide a slate of candidates consisting of at least twice the number of Board vacancies (less any vacancies for which the incumbent Trustee is running for election). Applicants propose to amend Section 6.3.2 of the Bylaws to provide that, for purposes of electing the first full Board of Trustees, the Trustee Selection Committee shall specify a slate of no less than 9 and no more than 15 candidates. Applicants also propose to modify Section 6.3.2 for subsequent elections to allow the number of candidates to be equal to or up to twice the number of vacancies. Applicants argue that these revisions address potential reluctance of highly qualified candidates to participate in a competitive election process. As a result, the Trustee Selection Committee may hold competitive elections, but is not compelled to do so if it determines that it would impede the candidate recruitment process.

24. In their Implementation Plan, Applicants submit a timeline for follow-up work necessary to seat a Board. According to the plan, the initial step (seating the Board, establishing the stakeholders' committees and selecting the Trustee (Board) Selection Committee) will begin in December 2002. Elections will be conducted in July, 2003, with the seating of the Board in October 2003. In the interim, Applicants state that through a Request for Proposals (RFP), they will retain a qualified implementation program manager (Program Manager). The Program Manager's responsibilities will include business plan development, strategic and foundational work to secure capital funding for start-up and initial operations, and development and testing of the communications, software, and hardware infrastructure necessary to support RTO West.

25. The process for selecting the Program Manager is proposed to be completed in September 2002. Applicants state that retention of the Program Manager will be subject to periodic performance reviews, and the RTO West Board of Directors, when seated,

will have the power to modify or terminate the arrangements with the Program Manager.²³

ii. Comments

26. EPSA supports the proposed Bylaws, claiming that they set forth an independent and workable governance structure, including a Board Advisory Committee that will provide input from all RTO members to the Board of Trustees. EPSA, Industrial Customers and Mirant believe it is essential that RTO West seat its independent Board immediately to ensure that meaningful stakeholder input is considered in any further decisions.

27. IPPs/Marketers argue that we should direct selection of the Board of Trustees within 180 days from the date of the Commission order approving the RTO West Bylaws. In addition, Applicants should be required to provide sufficient funding for the RTO to complete its organization, hire staff and assume responsibility for future filings until it is able to secure funding.

28. Public Power Council notes that the Board is not slated to be seated until November 2003; however, work to procure software, operations requirements and offices will be done in the interim. Public Power Council recommends that the Commission apply the ruling in GridFlorida²⁴ that an independent board must be seated as quickly as possible and that the filing utilities are barred from making decisions that will commit the Board to specific acquisitions and large expenditures.

29. Affiliated Tribes disagree with Applicants' proposed modifications to Section 6.3.2 of the Bylaws that allow the Trustees Selection Committee to nominate the same number of candidates from the executive search for which there are vacancies on the Board. They claim that the importance of these positions warrants a larger, more diverse group from which to elect candidates.

iii. Commission Determination

²³The Program Manager will also oversee the transition to governance by the independent Board.

²⁴See 94 FERC ¶ 61,363 at 62,364, order on reh'g, 95 FERC ¶ 61,473 (2001) (GridFlorida).

30. It is not clear what authority will be granted to the Program Manager and whether this authority will bind the RTO West Board, when seated, to prior acquisition and infrastructure decisions of the Program Manager. Because the Board should have the opportunity to provide input and make decisions on these critical issues, we direct Applicants to accelerate the Board Selection process.

31. We approve Applicants' modification to Section 6.3.2 of the RTO West Bylaws. While the Commission agrees with Affiliated Tribes that the Board positions warrant a diverse group of candidates, we believe that the qualification criteria set forth in the RTO West Bylaws will result in the identification of qualified Board candidates, regardless of the number. In selecting individuals to serve as Trustees, the RTO West Bylaws require that the Trustees Selection Committee ensure that individuals possess, collectively, a broad range of relevant experience in the following areas: commodities markets, electric bulk power transmission in the Western Interconnection, utilities management, law, finance, economics, accounting, information technology, engineering regulation and public policy.²⁵ The Bylaws also require that not less than two thirds of the candidates have substantial experience at senior management level of at least one publicly or privately held for-profit or not-for-profit corporation or government entity having revenues or an operating budget greater than five percent of the gross book value of the assets operated by RTO West. We find that these qualification criteria are reasonable and will result in a diverse and qualified group of candidates for consideration. We note that the Standard Market Design NOPR proposes an independent board structure with a stakeholder advisory committee, which is similar to the governance and board structure proposed by RTO West.

c. Other Changes

I. Applicants' Proposal

32. Applicants propose other amendments to the Bylaws to: accommodate participation in RTO West by Canadian entities; revise the statement of business purpose to express the need to seek sustainable customer benefits; distinguish the concept of membership classes from the concept of "classes" of Trustees for purposes of staggering their terms of office; strengthen provisions related to performance and financial accountability; and strengthen provisions concerning the Board Advisory Committee and public involvement.

²⁵In addition, the Bylaws require that the Trustees Selection Committee must also achieve racial, ethnic, age and gender diversity in the slates of nominees for election of the Board.

ii. Comments

33. NW Energy Coalition argues for rejection of Article III of the Bylaws, Purposes, which provides that RTO West may not "own any interest in generation facilities or the output thereof (except as necessary to meet its obligations as a provider of last resort for Ancillary Services) or . . . operate, or have any financial interest in, a power exchange." NW Energy Coalition argues that it is premature to prohibit RTO West from owning an interest in generation and inappropriate for RTO West to be prohibited from establishing a power exchange.

34. Northwest Industrial Customers argue that Applicants' implementation plan takes too long. They do not believe that it should take until 2006 for RTO West to become operational.

iii. Commission Determination

35. As currently proposed, RTO West will not own generation. In addition, RTO West does not propose to operate day-ahead energy markets when it first commences operations. Because, as discussed later in this order, it is not necessary for RTO West to have these market design features at start up, we will not require Applicants to modify Article III of the RTO West Bylaws at this time.²⁶

36. Applicants' revised Bylaws and Articles of Incorporation continue to satisfy the independence standard set forth in Order No. 2000. We also note that the advisory committee is open to any person, which would allow for participation by state regulators. In our Standard Market Design NOPR, we proposed that state regulators be permitted to have a separate committee through which they could provide input to the independent board of directors.²⁷ Although the current RTO West advisory board proposal allows state representatives to voice concerns to the RTO West Board through participation in the board advisory committee, we encourage Applicants to consider, with input from state representatives, whether establishing a separate state representatives committee as

²⁶This decision does not preclude RTO West from proposing these market elements in the future. The Standard Market Design NOPR proposes that an Independent Transmission Provider operate day-ahead (and real-time) markets for energy and ancillary services in conjunction with its scheduling of transmission service day-ahead and in real-time. Standard Market Design NOPR, at P 257.

²⁷Id., at P 561.

proposed in the Standard Market Design NOPR will provide a more effective role for state representatives to provide input to the RTO West decision making process.

37. In response to concerns that it will take too long for RTO West to become operational, we note that Applicants have filed a detailed implementation schedule. With the guidance in this order, Applicants and stakeholders will be able to proceed expeditiously with the development and implementation of RTO West.

3. Revised Transmission Operating Agreement (TOA)

38. The April 26 Order directed Applicants to revise the TOA to permit the independent transmission company, TransConnect L.L.C., to unilaterally file under section 205 incentive or performance based rates as part of its revenue requirement after consulting with RTO West. In addition, the April 26 Order required that the TOA be revised to eliminate the authority of those transmission owners that are not independent of market participants to unilaterally file with the Commission to establish or change rates under the region-wide RTO tariff.

a. Applicants' Proposal

39. Applicants submitted a revised TOA²⁸ as the controlling document of the RTO West proposal. The TOA contains, among other things, the congestion management proposal, the pricing methodology; operational responsibilities; transmission use rights; ancillary services, planning and expansion provisions; dispute resolution procedures; a market monitoring proposal; and indemnification and limitation on liability provisions.

40. In compliance with our April 26 Order, Applicants have revised Sections 16 and 17 of the TOA. These sections establish the principles under which RTO West would administer the tariff. Under the proposal, each PTO will retain its right to make Section 205 filings for unilateral changes in rates. Section 16.2 of the TOA states:

[R]ates, charges and fees . . . of the Executing Transmission Owner shall be as set forth in rate schedules as accepted for filing by FERC. Nothing contained in this Agreement shall be construed as affecting in any way the

²⁸Applicants submitted an initial TOA proposal on October 23, 2000. The Commission did not take specific action on the TOA in its April 26 Order. On December 1, 2001, Applicants submitted a revised TOA as part of the Concurring Utilities' Amended Supplemental Compliance Filing and Request for Declaratory Order Pursuant to Order No. 2000.

right of the Executing Transmission Owner to unilaterally make application to FERC under section 205 of the Federal Power Act . . . for a change in its rates, charges and fees

41. Section 16.3.1 states:

[T]he Executing Transmission Owner shall retain the right to unilaterally file with FERC for modification of its rates and recovery mechanisms, including performance-based rates and other innovative and incentive-oriented rate recovery mechanisms, if FERC determines that such Executing Transmission Owner is independent from control of market participants or otherwise is entitled by law to obtain such recovery. The Executing Transmission Owner shall consult with RTO West whenever possible before making a filing under this provision, to avoid conflicts with the RTO West Rate design.

b. Comments

42. Many intervenors argue that the TOA, which is to be executed by transmission owners joining RTO West, contains numerous provisions that are inappropriate for inclusion in the TOA.²⁹ According to these intervenors, certain provisions are related to RTO service and should be included in the RTO West Tariff (which is still under development). They assert that these provisions restrict RTO West's ability to administer the tariff and design rates and prevent the RTO from having independent authority to propose transmission rates. Intervenors also object to Section 25.18 of the TOA, which states:

In the event of conflict between the terms of this Agreement and the terms of (1) the RTO West Tariff or (2) the Executing Transmission Owner Rate Schedules, the terms of this Agreement shall govern.

According to intervenors, this provision provides the transmission owners continued control over terms and conditions of RTO service that are more appropriately controlled by RTO West itself or through changes to the RTO West Tariff. Intervenors further claim that this provision would impose a Mobile-Sierra public interest standard on parties that seek to change rules, practices or protocols agreed to by signatories to the TOA.

²⁹See, e.g., Industrial Consumers, Duke, IPPs/Marketers, Aluminum Industrials, EPSA, Mirant, UAMPS.

43. Industrial Customers and UAMPS argue that the TOA is discriminatory and violates the independence of RTO West because it provides for PTOs to advise and comment on core RTO functions, including the adoption of RTO West's annual budget. According to Industrial Customers, this allows PTOs to influence which transmission facilities are planned or constructed, perhaps to the detriment of third-party transmission facilities, generation options or load-interruption alternatives.

44. Duke and UAMPS state that the TOA continues to reserve control over RTO West's rates for the PTO's. They assert that the April 26 Order directed RTO West to revise the TOA "to eliminate the authority of those transmission owners that are not independent of market participants to unilaterally file with the Commission to establish or change rates under the region-wide RTO Tariff." According to Duke, Section 16.2 does not comply with the April 26 Order.

45. In their Answer, Applicants claim that the disputed provisions included in the TOA are reasonable given the value of the assets each PTO will contribute. Applicants admit that the TOA, to a degree, constrains the discretion of RTO West to take action concerning a PTO's assets. Applicants state that this is necessary to provide reasonable protection of the legitimate interests of the PTOs, ratepayers, shareholders, regulators, and other bodies to which they are answerable. Applicants state that each PTO is subject to legal duties that require it to exercise appropriate stewardship over its transmission assets. For this reason, terms of the TOA must be clear. They argue that it is appropriate for the TOA to contain provisions that will empower RTO West to carry out its fundamental purpose under Order No. 2000 while providing appropriate certainty and protection to the owners of the transmission assets to which RTO West will be entrusted. Applicants argue that the terms must be codified in the TOA, not in a tariff, which can be altered by RTO West.

46. Applicants also state, in response to claims that provisions of the TOA should be placed in the RTO West tariff, that whatever protections apply under the TOA to PTOs in their relationships with RTO West as customers will also apply under the RTO West tariff to RTO West's other transmission customers.

c. Commission Determination

47. We reject Section 25.18 of the TOA, which allows the TOA to automatically govern when conflict exists between the TOA and the RTO West Tariff. Although owners of transmission facilities have legitimate reasons to protect their capital investment and to define their relationship with RTO West as it relates to its use and operation of those facilities, any agreement reflecting such arrangement must not interfere with an RTO's ability to propose, implement, and change terms and conditions of the

services it will provide. We defer action on the remaining TOA provisions pending the submittal of the RTO West Tariff. We direct Applicants to submit a proposed RTO West Tariff within 120 days of the date of this Order. Upon its submission, we will consider the reasonableness of the remaining provisions of the TOA and whether certain provisions are appropriate for inclusion in the TOA, the Tariff or both.

RTO Characteristic No. 2: Scope and Regional Configuration

The RTO must have an appropriate scope.

48. The April 26 Order concluded that the proposal was consistent with Order No. 2000 with regard to scope and configuration. It also found the inclusion of Nevada Power and Sierra Pacific in RTO West acceptable for the scope and configuration of the RTO.³⁰ The April 26 Order stated that the Commission would address which facilities will be under RTO West's control at the time a proposal was submitted. The Stage 2 filing includes a list of such facilities for each of the Applicants.³¹

1. Canadian Participation

a. Applicants' Proposal

49. Applicants state that they do not propose to amend the approved regional scope and configuration of RTO West. They have been working with Canadian entities to develop the framework for seamless integration of wholesale transmission services in RTO West and in British Columbia and Alberta, Canada, while respecting Canadian sovereignty and appropriate regulatory oversight of Canadian facilities.

50. Section 4 of the TOA includes various provisions that are designed to enable RTO West to accommodate participation by B.C. Hydro and Alberta, as well as other Canadian transmission owners and operators. Sections 4.1 and 4.2 of the TOA contain minimum conditions that Applicants consider necessary to accommodate Canadian participation on a level playing field. Participation in RTOs is a matter of first impression in Canada. The extent to which Canadian participation in RTO West will be accommodated by Sections 4.1 and 4.2 depends on whether those conditions are acceptable to Canadian regulators and compatible with the Canadian regulatory structure. Applicants have committed to

³⁰95 FERC at 61,341-45. The July 12 Order denied rehearing regarding the inclusion of Nevada Power's and Sierra Pacific's facilities. 96 FERC at 61,178-80.

³¹B.C. Hydro's list of facilities is only for illustrative purposes.

continue working with B.C. Hydro and Alberta to explore, if necessary, other means by which Canadian participation can be accommodated without providing advantages to market participants on either side of the border. As a result, Applicants state that they may later propose to amend Section 4 of the TOA. Applicants state that British Columbia is studying the restructuring of the energy sector there. The basis upon which British Columbia may be able to participate in RTO West is undergoing review. Applicants expect to propose specific provisions to accommodate participation by B.C. Hydro and Alberta when the necessary details have been worked out.

b. Comments

51. Intervenors generally support Canadian participation in RTO West. EPSA states that the inclusion of B.C. Hydro makes RTO West consistent with the scope and configuration requirements of Order No. 2000.

c. Commission Determination

52. Since Canadian participation in RTO West is still being negotiated and Applicants do not request a declaratory order concerning Canadian participation at this time, we will address this issue when Applicants submit a more definitive proposal. We continue to strongly encourage Canadian and Mexican participation in RTOs. We believe that their participation can strengthen electricity markets throughout North America for the mutual benefit of all participants. In the West, imports of Canadian hydroelectric power and natural gas-fired power can help lower electricity costs for U.S. customers, to the benefit of both nations. We note that the West has a long history of electric power cooperation as shown by such efforts as the Columbia River Treaty and the participation by British Columbia and Alberta and in the Committee on Regional Electric Power Cooperation. Canadian participation in RTO West can further efforts to encourage mutually beneficial international power trading and help eliminate any market "seam" at the border by ensuring that all sellers and buyers operate as much as possible under a common set of rules. B.C. Hydro's joining the RTO West Stage 2 Filing is a positive step towards participation by all market participants in the Western Interconnection in RTO organizations that will operate the transmission grid in a non-discriminatory manner, which, in turn, supports the evolution of a robust, competitive wholesale electricity market in the West.

2. Bonneville's Participation

a. Applicants' Proposal

53. Applicants believe that Bonneville's participation is central to the viability of RTO West, and they intend to implement RTO West so long as at least two additional Applicants with transmission systems that are contiguous with Bonneville's have received the necessary approvals. Also, the market design process will include the negotiation of Bonneville participation in the market power or price mitigation programs of RTO West on the same terms and conditions as other PTOs, but in a manner consistent with Bonneville's statutory and environmental requirements.

54. Applicants state that several provisions of the TOA are designed to facilitate Bonneville's participation in RTO West. They note, for example, that Bonneville may not entirely delegate responsibility for its statutory, contractual, and treaty obligations and responsibilities to a non-federal entity. Additionally, they state that Bonneville must retain the contractual authority to withdraw its participation if RTO West fails to carry out its obligations and responsibilities under pre-established performance standards.

55. Applicants also state that the TOA allows Bonneville to immediately terminate its participation in RTO West if the Commission asserts authority over Bonneville's generation or power sales based on the TOA, the activities of RTO West, or Bonneville's transactions with RTO West. Bonneville disclaims any intent to agree, by executing the TOA, to additional jurisdiction by the Commission when the Commission's authority would otherwise be absent or limited.

b. Comments

56. Public Interest Organizations support the open public process to develop the joint filing, the RTO governance structure, its geographical scope and its contiguous configuration. EPSA states that the inclusion of Bonneville makes RTO West consistent with the scope and configuration requirements of Order No. 2000. EPSA recommends that the Commission conditionally approve the RTO West Stage 2 Filing because it is an important step in the development of a fully competitive and efficient market in the Northwest.

57. Public Generating Pool claims that the Stage 2 proposal is an unconstitutional delegation of governmental authority and that the Commission cannot approve an illegal arrangement. Public Generating Pool asserts that Bonneville cannot delegate to RTO West inherent governmental functions such as control of transmission facilities, interconnections, upgrades and maintenance, and contract administration and cost allocation decisions.

58. PG&E argues that Bonneville's participation in RTO West on the same basis as the other transmission owners is necessary for RTO West to achieve many of the efficiencies

and reliability functions that the Commission envisions.³² PG&E requests that the Commission urge the Department of Energy to direct Bonneville to join RTO West.

c. Commission Determination

59. With respect to Public Generating Pool's concerns about the lawfulness of Bonneville's turning over control of its facilities to an RTO, we reiterate findings in our April 26 Order, *i.e.*, Bonneville's participation in RTO West is voluntary, and concerns as to whether Bonneville is adequately protected are more appropriately addressed in proceedings that Bonneville will initiate pursuant to the Pacific Northwest Electric Power Planning and Conservation Act. We further recognized that, Bonneville is subject to limited Commission jurisdiction as a federal power marketing agency. Further, any approval by the Commission of RTO West does not grant Bonneville an exemption from obtaining other necessary approvals.³³ No party has identified any change in circumstances since the April 26 Order that would lead us to change our earlier determination.

60. With respect to PG&E's concerns that Bonneville participate with the same commitments and on the same basis as the other transmission owners, Applicants explain that they will continue negotiations concerning Bonneville's participation in RTO West, including its participation in market power or price mitigation programs. Our guidance in this order is based on the information available to us at this time, which presumes Bonneville's participation in RTO West. When additional information concerning the proposal for Bonneville's participation is submitted, we will provide further guidance. In the meantime, we encourage the ongoing efforts to accommodate Bonneville's participation in RTO West.

3. Facilities to Be Included in RTO West

61. The April 26 Order concluded that "most or all of the transmission facilities in the region should be operated by the RTO, as well as those necessary for operational control and management of constrained paths, regardless of the voltage."³⁴

³²PG&E believes that the lack of participation by Western Area Power Administration in the California ISO has hindered the efficient operation of the interconnected systems in California.

³³95 FERC at 61,344-45.

³⁴*Id.* at 61,345.

a. Applicants' Proposal

62. Applicants' Stage 2 Filing describes the facilities over which PTOs will transfer operational control to RTO West. Applicants, however, do not propose to give RTO West operational control over all facilities: rather, RTO West "will provide access to service on facilities that are not included as part of the RTO West Transmission System but that are needed to transmit wholesale power (local distribution facilities)."³⁵ To accomplish their proposal, Applicants describe four types of facilities over which RTO West will provide transmission service. According to Applicants, this will allow RTO West to offer "one-stop shopping for transmission service."³⁶ Applicants describe the categories of facilities as follows:

1. Class A facilities or RTO West Controlled Transmission Facilities are facilities that materially impact the transmission system's transfer capability and are necessary for RTO West to perform its congestion management function. A PTO will turn over control of these facilities to RTO West and these facilities will be included in determining the price of transmission service by RTO West.
2. Class B facilities are those facilities a PTO may turn over to RTO West for purposes of transmission access and cost recovery only; RTO West will not have operational control over these facilities.
3. Class C facilities or Certain Distribution Facilities are dual-function facilities that are used primarily to provide retail load service, and have a secondary purpose of providing, and supporting the provision of, wholesale services. These facilities are classified as distribution facilities pursuant to State or federal order, and they have a secondary effect on RTO West's ability to execute its congestion management function. Because of this effect, RTO West will have certain operational, maintenance, and planning authority over these facilities to enable it to provide wholesale transmission services and manage congestion. The PTOs will retain ultimate authority

³⁵Stage 2 Filing at 34.

³⁶The specific facilities are listed in Attachment D to Applicants' Stage 2 Filing. Applicants state that the list is preliminary and may change. Attachment D also includes, for illustrative purposes, the transmission facilities of B.C. Hydro. As noted above, B.C. Hydro is not currently included in the RTO West scope and regional configuration, and Applicants do not seek a declaratory order with respect to Canadian facilities at this time.

for all local distribution planning and expansion on these facilities, but RTO West will have planning and expansion authority over Class C facilities for transmission adequacy and congestion management purposes. Service over Class C facilities will be priced under a Commission-approved wholesale distribution tariff.

4. Class D facilities are Local Distribution Facilities that are not part of the RTO West Transmission System but that are needed to transmit wholesale power. RTO West will provide access over these facilities. RTO West will not have operational control over these facilities nor will it include the cost of these facilities in pricing for transmission service.

b. Comments

63. Truckee argues that it is confusing to have four classes of facilities that are to be wholly or partially subject to RTO West's control, pricing, and/or provision of transmission service. It asserts that the proposal lacks enforceable criteria defining which facilities are to be placed in each class. Truckee claims that Applicants have not provided any rationale for allowing the PTOs to retain full or partial operating control and planning authority over any of the facilities. EPSA claims that the RTO West facilities proposal, with different classes of facilities (some under RTO control and some under transmission owner control), may result in rate pancaking.

64. Several intervenors state that, in order to satisfy Order No. 2000's independence and other requirements (including non-pancaked rates and one-stop shopping), RTO West must have both functional control and pricing authority over all of the facilities that make up the transmission system it is to administer.³⁷ Northwest Requirements Utilities and Idaho Energy Authority state that the Commission has clearly articulated the relevant standard in Order No 888. Facilities owned by a Commission-jurisdictional "public utility" that are "used to deliver electric energy to a wholesale purchaser, whether labeled transmission, distribution, or local distribution, are subject to the Commission's exclusive jurisdiction under Sections 205 and 206 of the Federal Power Act."

65. PNGC argues that creation of special facility classes in order to limit RTO West's authority and scope should be rejected. PNGC states that it is difficult to know how the description of the facilities included in transmittal letter, the facilities descriptions included the TOA and the Planning Proposal, and the Lists of Facilities relate to each other and to the authorities the RTO is alleged to have.

³⁷See, e.g., Northwest Requirements Utilities, Williams, Truckee, UAMPS, Duke.

66. Several intervenors allege that Applicants have omitted hundreds of lines that are necessary for transmission of wholesale power to wholesale utilities and for RTO West Planning.³⁸ Many intervenors also claim that Applicants fail to fully substantiate the assumptions used to classify transmission facilities. PNGC argues that there is much ambiguity regarding which facilities are included. Northwest Requirements Customers argue that Applicants appear to justify the withholding of facilities from RTO West authority by, among other things, excluding facilities that have been or are proposed to be reclassified from transmission to distribution or local distribution. UAMPS claims that both the TOA and the description of Class A facilities lack a clear definition of what constitutes a "material" impact for the purpose of defining a facility as Class A. Instead, the determination is apparently left to each PTO's discretion. UAMPS further notes that, contrary to the Commission's guidance in its April 26 order, the TOA explicitly provides that the transmission owner is not be required to define radial lines as Class A facilities. UAMPS and other intervenors claim that the Applicants have given themselves the discretion to identify Class C facilities, although such facilities may have an impact on RTO West's ability to execute its congestion management function. They similarly claim that Class D facilities are excluded from RTO West's control even though the facilities are needed to transmit wholesale power. UAMPS claims that applicants have offered no functional justification for their classifications.

67. PNGC requests that the Commission order the PTOs to produce one listing of all facilities in their system needed for jurisdictional wholesale transfers, regardless of the classification as distribution or transmission or voltage. PNGC further requests that RTO West should develop an uncomplicated method by which lines may be implicated in future wholesale service.³⁹

68. In their answer, Applicants disagree that the Commission should require all facilities used for wholesale service to be placed under RTO West's operational control. Applicants state that using the wholesale service test to determine which facilities are placed under RTO West's control is unworkable and unacceptable to the PTOs or the state commissions because doing so would: (1) balkanize many of Applicants' delivery systems, including local transmission and distribution; (2) effect a complete transfer to

³⁸See, e.g., PNGC, Northwest Requirements Utilities, Northwest Requirements Customers, UAMPS.

³⁹PNGC claims that Bonneville submitted the lines necessary for wholesale deliveries, but Applicants have either withheld facilities from the list or inappropriately classified the facilities as not under the operational control of RTO West.

federal regulatory jurisdiction of Applicants' entire delivery systems, including distribution; (3) impair efficient system operations; (4) create a split between state and federal jurisdiction; and (5) have a profound effect upon the price and quality of service received by all of its retail and wholesale customers.

c. Commission Determination

69. We agree with intervenors that Applicants have not adequately explained how and why the various "classes" of facilities were created and have not provided a rationale or used a consistent method to determine a particular facility's "class."

70. In Order No. 2000, the Commission stated "if an RTO proposal does not cover all the transmission facilities within its proposed region, it should identify the reasons for this, any continuing efforts to include all facilities, and any interim arrangements with the non-represented facility owners to coordinate transmission functions within the region."⁴⁰ We direct Applicants, within 120 days of the date of this order, to file a complete list of their facilities (i.e., an inventory of each Applicant's lines, substations, etc. owned or operated by the Applicant for purposes of moving electricity regardless of its current accounting designation as transmission or distribution) and to identify and fully explain the disposition of each facility (e.g., whether a facility is under RTO West control for operational purposes, pricing, interconnection, planning, or remains under the PTO's operational control).⁴¹ Applicants have not provided any rationale for their continued operational control over Class B facilities. In the inventory required above, in addition to identifying their facilities, we direct Applicants to provide specific reasons and rationale why each facility proposed to be classified as a Class B facility is more appropriately controlled by PTOs rather than RTO West upon commencement of RTO service. Upon receipt of the inventory and accompanying explanation, we will consider whether additional stakeholder discussions or technical conferences are necessary to resolve whether and how all appropriate facilities are provided to RTO West.

RTO Characteristic No. 3: Operational Authority

The RTO must have operational authority over all transmission under its control.

⁴⁰Order No. 2000 at 31,086.

⁴¹We note that, in our Standard Market Design NOPR, we propose that the seven-factor test enunciated in Order No. 888, which was created to identify local distribution facilities, be used to determine what facilities should be operated by a independent transmission provider. Standard Market Design NOPR, at PP 361-369.

1. Applicants' Proposal

71. According to the TOA, RTO West will exercise operational authority and will provide transmission service over all the facilities placed under its control.⁴² RTO West states that it will assume control of the existing control areas of the PTO and will have the right to operate such control areas as a single RTO West Control Area. It will operate that control area in compliance with: (1) Good Utility Practice; (2) North American Electric Reliability Council (NERC) and Western Electricity Coordinating Council (WECC) standards; (3) applicable regulatory requirements; (4) operating reliability criteria, dispatch standing orders and operating bulletins of the Executing Transmission Owner, provided that they comply with applicable NERC and WECC standards; and (5) applicable laws, treaties and regulations.

72. Under the terms of this proposal, RTO West will perform all security coordination functions (directly or by contract) related to its transmission system. Security coordination will be provided, at least initially, by an independent nonprofit corporation, Pacific Northwest Security Coordinator (PNSC), which is the entity that currently provides security coordination services to most of the control areas that will be encompassed by RTO West.⁴³

2. Comments

73. As noted above, many intervenors raise concerns regarding the facilities over which RTO West should have operational control and argue that a decision on this issue affects the ability of RTO West to satisfy this Order No. 2000 characteristic. The Washington AG, Washington Commission and Northwest Planning Council state that the current classification of system facilities provides RTO West with control necessary to operate the grid.

3. Commission Determination

74. As noted above, RTO West's governance structure complies with Order No. 2000 independence requirements. and will enable RTO West to satisfy the requirements of an independent transmission provider under our Standard Market Design NOPR. Applicants' proposal provides that RTO West have the necessary authority to operate

⁴²See TOA Sections 6.1.1, 6.4.1, 6.6.

⁴³PNSC is currently the security coordinator for every filing utility except Nevada Power.

transmission facilities under its control. However, to determine that RTO West has appropriate operational control, RTO West must control all facilities necessary to provide reliable, non-discriminatory transmission service within its region. We agree with intervenors that the issue of which facilities in the control area of RTO West will be under the control of RTO West must be decided before a final determination regarding its operational authority can be made. Accordingly, we will consider this issue concurrent with the resolution of the facilities inclusion issue. We applaud Applicants' proposal to form a single control area within the RTO West footprint as means to provide for efficient operation and to reduce the cost of operations. Elimination of multiple control areas will assist in avoiding potential "seams" within RTO West due to control area operations.

RTO Characteristic No. 4: Short-Term Reliability

The RTO must have exclusive authority for maintaining the short-term reliability of the grid it operates.

1. Applicants' Proposal

75. RTO West will have exclusive authority to receive, confirm and implement all interchange schedules. Section 6.10 of the TOA provides (and Generation Integration Agreements will provide) that RTO West has the authority to take actions necessary to maintain the reliability, security and stability of the RTO West transmission system.

76. Loads taking transmission services and electric generation facilities in the RTO West Control Area must comply, to the extent practicable, with curtailment and redispatch orders during a Transmission System Emergency. PTOs must submit to RTO West all proposed maintenance outages on RTO West-Controlled Transmission Facilities. RTO West will approve or reject maintenance outage schedules based on RTO West's business practices and operating and reliability criteria. RTO West may report to the Commission if it determines that any reliability standards established by WECC hinder its ability to provide reliable, non-discriminatory and efficiently priced transmission services.

2. Comments

77. Northwest Requirements Utilities allege that the exclusion of facilities necessary to transmit wholesale power harms the RTO's ability to ensure short-term reliability.

78. Public Generating Pool states that, without a Generation Interconnection Agreement in the Stage 2 filing, the Commission cannot judge the likelihood that RTO West will have authority over short-term reliability. Public Generating Pool suggests that the owners of federal generators in the Northwest do not have the authority to agree to submit to redispatch orders from RTO West. Public Generating Pool points out that portions of the capability of federal resources have been sold under long-term contracts, and those contracts provide certain dispatch rights to the purchasers. According to Public Generating Pool, interposing RTO West into those contractual relationships may violate those long-term contracts.

3. Commission Determination

79. Order No. 2000 requires an RTO to have: (1) exclusive authority for receiving, confirming, and implementing all interchange schedules; (2) redispatch authority for any generator connected to its transmission facilities; and (3) authority to approve or disapprove all requests for scheduled outages of transmission facilities to ensure that the outages can be accommodated within established reliability standards.⁴⁴ These requirements are satisfied by the TOA as proposed. We accept Applicants' commitment that Generator Interconnection Agreements will provide RTO West with the necessary authority to maintain short-term reliability. Public Generating Pool can raise its specific arguments when these agreements are filed. In response to Public Generating Pool's concern, the proposal preserves the rights of existing contract holders.

80. Although certain intervenors argue that the agreements would enable RTO West to assert authority over Bonneville's statutorily mandated activities, that issue is currently being negotiated between the parties. Our conclusion that RTO West satisfies the short-term reliability requirement of Order No. 2000 does not eliminate the need for Bonneville to obtain whatever assurances it needs regarding reliability of its facilities in order to satisfy its statutory requirements as a condition of becoming a member of RTO West. Accordingly, we find that RTO West meets the requirements of Order No. 2000 for short-term reliability

RTO Function No. 1: Tariff Administration and Design

The RTO must administer its own transmission tariff and employ a transmission pricing system that will promote efficient use and expansion of transmission and generation facilities.

⁴⁴See Order No. 2000 at 31,104.

81. Applicants propose that RTO West will have the authority to design and administer its tariff. The TOA provides RTO West the exclusive right and obligation to provide transmission service across the RTO West transmission system and authority over interconnection of generation and load to the system.

82. We find that, subject to modifications required below, RTO West will meet the requirements of Order No. 2000 for Tariff Administration and Design. We also direct certain modifications to Applicants' proposal for processing interconnection requests. Although the RTO West tariff language, as well as certain other relevant documents, have not yet been filed, the guidance provided in this order will ensure that RTO West independently administers its tariff. We will review the RTO West tariff when filed for consistency with the representations in the Stage 2 filing and the modifications required in this order. Specific elements of Applicants' tariff design proposal are discussed in more detail below.

1. Cataloguing and Contract Conversion Process

a. Applicants' Proposal

83. RTO West will be the sole provider of transmission services over the transmission facilities that become part of the RTO West system. For this reason, RTO West will fulfill transmission service obligations under pre-existing transmission contracts and load service obligations, whether or not these contracts are converted to RTO West service. To fulfill these obligations under pre-existing agreements, RTO West will compile two sets of information related to the PTOs' transmission obligations: (1) the nature and extent of each PTO's outstanding transmission service obligations related to pre-existing transmission contracts and load service obligations, whether or not they are converted (Catalogued Transmission Rights) and (2) the Congestion Management Assets each PTO will make available to RTO West so that RTO West can honor and manage, in aggregate, all service related to those obligations.⁴⁵

⁴⁵Applicants note that a critical concern in this process is that all the potential rights the parties might elect to exercise under pre-existing contracts and load service obligations are greater than the set they can exercise in practice at any one time. This is because there are situations where multiple parties have rights to use a particular transmission line, and their aggregate rights exceed the capacity of the line. Individual peak use needs are satisfied, however, due to the diversity among parties' individual use needs. Catalogued Rights will be allocated to the extent that all requested schedules are simultaneously feasible, i.e., RTO West can, through redispatch, accommodate the
(continued...)

84. Congestion Management Assets are the physical facilities each PTO agrees to allow RTO West to operate and provide transmission service across. These assets will include facilities such as transmission lines, substations, phase shifters and other hardware. To the extent these physical facilities alone are not adequate to support all of the pre-existing obligations a PTO identifies in its catalogue, the PTO will have two options: (1) to expand its physical system or (2) to make available to RTO West an adequate range of contractual and operational mechanisms such as remedial action schemes, redispatch services, and the rights to restrict service under pre-existing contracts. The catalogue entries for each PTO's Congestion Management Assets will list both physical facilities and any necessary contractual and operational mechanisms.⁴⁶

85. RTO West will test the sufficiency of each PTO's catalogued Congestion Management Assets, measured against all of the rights under the PTO's pre-existing transmission contracts and load service obligations in the aggregate (not on a contract by contract basis). If the RTO West testing reveals that a PTO's Congestion Management Assets are not sufficient to cover all of the PTO'S Catalogued Transmission Rights and converted obligations, the PTO will be obligated to make up any shortfall.⁴⁷

86. RTO West will be responsible for managing the aggregate set of Catalogued Transmission Rights and converted obligations it must honor and using the Congestion Management Assets each PTO has provided to support its pre-existing obligations. In doing so, RTO West will have the ability to take advantage of flexibility and diversity within and between sets of Catalogued Transmission Rights to more efficiently use the physical capacity available on a PTO's system.

⁴⁵(...continued)

movement of power from the requested injection points to the requested withdrawal points.

⁴⁶Each PTO has the obligation to provide to RTO West Congestion Management Assets that are at a minimum sufficient to satisfy its outstanding pre-existing transmission contracts and load service obligations. These obligations encompass whatever is necessary to support a contract customer's full exercise of its contract rights (including the ability, if the contract provides, to modify schedules after the close of Day-Ahead scheduling).

⁴⁷RTO West will perform an additional sufficiency test to make sure that when expected simultaneous use of all PTOs' Catalogued Rights and covered obligations are considered, there are sufficient Congestion Management Assets, on an aggregate PTO basis, to honor all obligations.

87. Catalogued Congestion Management Assets will be periodically updated to reflect changes in a PTO's transmission service obligations.⁴⁸ If a PTO has a load service obligation or an obligation under a pre-existing contract that requires it to provide transmission capacity to accommodate load growth, the PTO will be allowed to revise its catalogue when such obligations are triggered. As PTOs' catalogue entries change, RTO West will repeat the individual and aggregate adequacy testing to ensure each PTO continues to provide sufficient Congestion Management Assets to satisfy its transmission service obligations.

88. Contract customers of each PTO are provided with the option to either (1) voluntarily convert their pre-existing transmission agreements to RTO West transmission service (RTO West service) or (2) retain their pre-existing transmission agreements (non-converted service). Applicants' proposal states that non-converted service will be taken only by PTO's for the purpose of honoring pre-existing contracts and service obligations that are not converted to RTO West service.⁴⁹ New transmission service requests, which includes any service beyond that provided for under the terms of a non-converted contract, will be provided by RTO West service.

89. If a transmission customer elects to convert to RTO West service, the customer will enter into a three-way suspension agreement that will relieve the PTO of its transmission service obligations under the pre-existing transmission agreement and shift those transmission service obligations to RTO West.⁵⁰ Contracts and service obligations

⁴⁸The timing of catalogue updates will be coordinated with RTO West's congestion revenue rights auction process, which is discussed later in this order. Coordination is necessary because RTO West must know current catalogue requirements to determine how many congestion revenue rights can be released through the auction process.

⁴⁹Stage 2 Filing at Attachment E1, p.2. If a contract customer elects not to convert to RTO West service, the PTO will become its Scheduling Coordinator for purposes of submitting transmission schedules to RTO West that reflect use of the customer's transmission rights under the non-converted agreement.

⁵⁰Applicants envision that the Contract Customer and the PTO must agree on both the process and the outcome of the cataloguing process if the contract is to be converted to RTO service because, once the contract is converted, the Contract Customer will be bound by the provisions of the catalogue regarding its ability to submit schedules linked to Catalogued Transmission Rights. The Contract Customer must agree that the Catalogued Transmission Rights accurately reflect the underlying contract and that it will
(continued...)

converting to RTO West service are provided with a further option with regard to the manner in which transmission service is scheduled: (1) retain the Catalogued Transmission Rights associated with their converted contract or obligation, and submit transmission schedule requests based on those rights; or (2) elect to receive instead congestion revenue rights, or Financial Transmission Options (Transmission Options), which can be used to offset congestion charges that apply to any transmission service schedule request submitted, *i.e.*, greater scheduling flexibility is available to those converted contracts and obligations that choose to receive Financial Options than if Catalogued Transmission Rights are retained.⁵¹

b. Comments

90. Several intervenors assert that the Applicants' treatment of existing contracts will create a tiered model that allows for different levels of service to different market participants, and that it may discriminate against merchant generation. These intervenors assert that all load should be placed under the RTO West tariff at commencement of operations.

91. Numerous intervenors argue that the cataloguing process is unreasonable and does not protect existing customers' rights because the customer is not involved in the process. They argue that customers are not afforded any recourse to resolve disagreements over assigned catalogued rights because only RTO West and the Transmission Owner are involved in the process of identifying the rights under each existing contract.

92. Public Generating Pool claims that the RTO West proposal will affect customers' existing settlement agreements with Bonneville, which provide those customers specific rollover rights. Public Generating Pool states that the RTO West proposal creates an automatic extension of the limited rollover rights that is different from the terms of these agreements. It further argues that the RTO West provisions for handling existing contracts will lead to preferential and discriminatory treatment of PTOs under the terms of the settlement agreements.

93. IPPs/Marketers and Aluminum Industrials express concern that the cataloguing process and the provisions for providing Congestion Management Assets by PTOs with

⁵⁰(...continued)

look only to RTO West to resolve any problems with RTO service reflecting use of those rights.

⁵¹The use of Financial Options is described in more detail in Applicants' congestion management proposal, which is discussed later in this order.

non-converted service obligations are not clearly defined and may create a bifurcated market in RTO West.

94. Alberta Intervenors state that allocating Catalogued Transmission Rights for existing contracts will not lead to efficient use of the transmission system because transmission customers with Catalogued Transmission Rights will be able to use their existing contracts to reserve transmission capability, making transmission unavailable to other market participants.

95. UAMPS states that the dispute resolution procedures for cataloguing transmission rights inappropriately place the burden of proof on the transmission customer and should be eliminated.

96. Montana Consumer Counsel and Duke request that certain issues be clarified, including: the treatment of new transmission contracts executed before RTO West operation as pre-existing contracts; the approval rights and obligations of the parties regarding contract conversion; the treatment of roll-over, extension and/or termination rights in existing agreements; the treatment of load growth; and whether customers that have catalogued rights are treated differently than customers that receive Financial Options.

97. Truckee states that procedures governing the conversion of existing contracts to catalogued transmission rights should be modified. According to Truckee, the conversion proposal does not make clear whether a transmission customer that converts to RTO service with Catalogued Transmission Rights will pay pancaked rates. Truckee states that a converting customer should be allowed to request service from RTO West under an unexecuted service agreement so that the customer may take regional service while catalogued rights are being disputed.

98. Wyoming Energy Consumers contends that existing rights should transfer with load if load shifts suppliers in a retail choice regime. According to Wyoming Energy Consumers, since the existing customers have contributed to the cost of the system, they should keep their rights to that system.

99. The Washington Commission claims that the preservation of existing contract rights is necessary in order that native load customers not lose the benefit of service over facilities for which customers have already contributed.

100. In their Answer, Applicants reiterate that the Catalogued Transmission Rights do not affect or limit the pre-existing contract rights of non-converting PTO customers and that section 9.2 of the TOA provides such assurance. Transmission customers that elect to retain their pre-existing contracts will not be adversely affected or advantaged by the

cataloguing process. Applicants state that, although some involvement by transmission customers to determine Catalogued Transmission Rights is warranted, non-converting customers should not be able to use such participation to obtain additional rights to further define their existing contractual relationships with PTOs.

101. Contrary to Public Power Council's assertion that PTOs have incentives to minimize transmission rights during the cataloguing process, Applicants argue that PTOs have strong incentives to ensure the adequacy of these rights to enable them to avoid future conflicts with non-converting customers regarding their contract rights. Applicants also note that section 8.3 of the TOA provides that, "if the [PTO] determines or, pursuant to a dispute resolution process, it is determined that the catalogue . . . does not satisfy a transmission customer's rights, the Catalogued Transmission Rights shall be modified to satisfy such rights."

102. In response to assertions that the dispute resolution process promotes discrimination in the conversion process, Applicants state that the dispute resolution process is the product of a proposed compromise between (1) the right to use the RTO West arbitration procedures to resolve quality of service and access issues related to non-RTO West facilities (which many public power entities desired) and (2) the right to an option to convert to Catalogued Transmission Rights instead of Financial Options (which some of the Applicants and others with unique contracts desired).

c. Commission Determination

103. We disagree with intervenors who argue that the cataloging and conversion process will yield different types of service or create a bifurcated market. As Applicants state, non-converted customers who elect to remain with their pre-existing contracts should neither be adversely affected nor advantaged by the cataloguing process. In addition, all customers with long-term contracts will have the same option to convert their contracts.⁵² Therefore, we will not require mandatory conversion of contracts, as requested by certain intervenors.⁵³ We find that Applicants' proposal for voluntary

⁵²Applicants state that each PTO will modify its Open Access Transmission Tariff, prior to commencement of RTO West service, to provide for a one-time opportunity for transmission customers to exercise rollover rights.

⁵³Under the proposal, PTOs will take non-converted transmission service for those contract customers who choose to remain under their pre-existing contracts. The PTO will become the non-converted contract customer's Scheduling Coordinator for RTO
(continued...)

conversion is reasonable because it allows existing contract customers to choose to either maintain the benefits of their pre-existing contracts or convert to a more flexible RTO West transmission service.

104. Several intervenors also raise concern that the existing transmission contract customer would be unable to participate in the determination of the rights under the existing contract (cataloguing) or to be involved in the dispute resolution if they disagree with the contract rights determination. We disagree. The dispute resolution procedures included as part of the TOA (Exhibit P) provide that, if the PTO and the contract customer cannot agree upon a catalogue before conversion, the customer may pursue arbitration.⁵⁴ Accordingly, the contract customer is able to initially determine, and contest, the Catalogued Rights. However, we agree with UAMPS that the dispute resolution procedures for cataloguing transmission rights inappropriately places the burden of proof on the PTO customer. We direct Applicants to remove this provision from the TOA. In addition, consistent with Applicants' commitment, we direct Applicants to include an equivalent provision in the RTO West tariff concerning customers' rights to dispute resolution.

105. With respect to the rate pancaking issue raised by Truckee, as discussed later in this order regarding transmission pricing, Applicants pricing proposal is intended to avoid rate pancaking and it does not appear that the conceptual pricing proposal provides for the payment of pancaked rates when an entity is subject to a Transfer Charge as part of its transmission service charges. Applicants should make this clear in the definition of Transfer Charge in the RTO West Tariff. We also agree with Wyoming Energy Consumers that existing transmission rights should follow the load if it shifts suppliers in a retail choice regime.

106. Applicants' proposal to offer a single transmission service under the RTO West tariff is consistent with the current proposal in the Standard Market Design NOPR.⁵⁵ The voluntary conversion option provides customers with the ability to determine whether its

⁵³(...continued)
West transmission service.

⁵⁴Issues subject to arbitration are limited to: (1) demands and locations of Points of Injection and Points of Withdrawal; (2) limitations on amounts and directions of overall schedules; (3) scheduling points of receipt and delivery (if off the RTO West Transmission System); (4) flexible scheduling or limitations; (5) PTO's rights to limit or curtail schedules; and (6) load growth amount or formula.

⁵⁵Standard Market Design NOPR, at PP 370-374.

existing transmission rights, including those for pre-Order No. 888 contracts, or conversion to RTO West transmission service, with more flexible scheduling rights and tradable congestion revenue rights (as discussed later in this order), best satisfies their transmission needs.

2. Transmission Service

a. Applicants' Proposal

107. Although RTO West will be providing all transmission service over its system when commercial operations begin, RTO West will "offer" Non-converted Transmission Service and Transmission Use Service to reflect the outcome of contract conversion elections. As noted previously, Non-Converted Transmission Service will be available to PTOs to honor pre-existing transmission agreements and obligations that have not been converted to RTO Transmission Use Service. Customers will continue to pay the charges under their non-converted contracts to the PTO, which will be the customer's Scheduling Coordinator. As described below, the Scheduling Coordinator may be subject to other charges from RTO West (e.g., Grid Management Charge) associated with submitting transmission schedule requests to RTO West reflecting the Catalogued Transmission Rights under the non-converted contracts.⁵⁶

108. Transmission Use Service will apply to all RTO West transmission customers taking new transmission service or those choosing to convert their contracts to RTO West transmission service. These customers' Scheduling Coordinators will be subject to the payment of a basic transmission charge as described below. These Scheduling Coordinators may also be subject to other charges from RTO West associated with their transmission schedule requests, similar to those for Scheduling Coordinators for non-converted contract customers.

109. Applicants state that the RTO West pricing conceptual plan⁵⁷ reflects five primary objectives for RTO West to provide non-discriminatory open access transmission service: (1) avoiding substantial price increases and cost shifting among loads, (2) eliminating "pancaked" rates for use of the RTO West transmission system; (3) honoring existing

⁵⁶The PTO may attempt to collect these charges from the pre-existing transmission customers if their contracts permit such recovery.

⁵⁷The specific individual components of the pricing proposal (e.g., the individual license plate rate for each PTO) will be developed and submitted prior to commercial operation of RTO West.

transmission service agreements, (4) recovering a contribution to fixed costs from all users of the RTO West transmission system and (5) promoting economic efficiency by minimizing the use of volumetric, transaction-based charges.

110. Due to concerns regarding cost shifts, Applicants propose a license plate rate design (the Company Rate)⁵⁸ and to retain the initial rate design for a transition period of eight years (the Company Rate Period). In addition, to assist in maintaining revenue certainty associated with Transfer Charges by PTOs during the Company Rate Period (which are a component of determining the Company Rate),⁵⁹ if any pre-existing transmission agreement among PTOs that is required to serve load within the RTO West transmission system expires during the period, the agreement will be extended (rolled over) for the remainder of the transition period with a charge consistent with the rate for a PTO's OATT service obligation. Revenues received during the term of the extended service will continue to flow to the PTO.

111. During the Company Rate Period, RTO West's charges for transmission service over the RTO West Transmission System may include: (1) Company Rate Charges; (2) Transfer Charges, which are applicable to converted pre-existing transmission agreements; (3) External Interface Access Fees (Export Fee) for service to loads outside the RTO West footprint; (4) a charge or set of charges to implement a Backstop Recovery Mechanism; (5) a Grid Management Charge for recovery of RTO start-up and operating costs; (6) rates, charges, and fees to recover congestion on the RTO West transmission facilities, real power losses and ancillary services; and (7) any allocation of stranded costs. The individual rate components are discussed below.

112. A new transmission customer taking Transmission Use Service will pay the Company Rate of the zone in which the load is located within the RTO West footprint. Transmission service to load outside the RTO West footprint is assessed an Export Fee. Transmission customers taking RTO West service after converting a pre-existing point-

⁵⁸The "Company Rate" is described infra.

⁵⁹Applicants indicate that a significant portion of PTOs' revenue requirements was satisfied by the payment of revenues under long-term non-firm transmission contracts, which the Commission generally has not permitted as part of a company's cost of service. To avoid cost shifts as a result of varying payments under these agreements, Applicants propose to determine, based on the last three years' transactions, the net revenue paid (or received) by each PTO and hold the amounts constant during the Company Rate Period.

to-point transmission contract will pay a Transfer Charge.⁶⁰ If a transmission customer has converted a pre-existing contract for network service, it will pay the PTO's Company Rate.

113. RTO West will use a formula to develop each PTO's Company Rate. The Company Rate for a PTO will be the effective rate paid by a PTO for service to its native load (retail and wholesale requirements customers). The Company Rate will be developed by taking into account: (1) PTO company costs; (2) net Transfer Charges⁶¹; (3) Revenues from Non-converted Transmission Service; (4) Costs of Non-converted transmission contracts; (5) transmission facility cost sharing payments; (6) allocated merchant function External Interface Access Fees; (7) TOA cost allocations; and (8) Replacement Revenue Pool allocations (if applicable). Applicants state that each PTO will use a two-year forecasted test period to establish its costs and billing determinants so that each PTO will have a consistent company cost determination.

114. Applicants state that the elimination of pancaked rates for transmission service within the RTO West footprint creates a revenue shortfall. The Stage 2 pricing proposal establishes a Replacement Revenue Pool from which allocations will be made to PTOs to compensate for the loss of revenues from elimination of non-firm and short-term firm charges at RTO West start up and from the loss of revenues from pre-existing long term pre-existing contracts that expire during the Company Rate Period. The Revenue Replacement Pool will consist of funds from three sources: (1) revenues from External Interface Access Fees; (2) the surplus revenues from the congestion management system; and (3) revenues from the Backstop Recovery Mechanism if necessary to correct a sustained under-collection of a Revenue Recovery Target using only the first two items.⁶²

⁶⁰In effect, Transfer Charges will be assessed to PTO point-to-point contracts with other PTOs.

⁶¹Payment and receipt by each PTO of Transfer Charges under converted pre-existing contracts are netted against each other, and the resulting balance will be either an addition or an offset to the PTO's Company Rate revenue requirement.

⁶²The Revenue Recovery Target represents a fixed dollar amount equal to the average of non-firm and short-term revenues collected by PTOs for a set of reference years, beginning with 1999 and running until the last full calendar year that immediately precedes RTO West's commencement of operations. The Revenue Recovery Target will be adjusted for revenue lost as a result of long-term contracts expiring during the Company Rate Period.

115. RTO West will charge an export fee for transmission service to loads that are external (i.e., require external interface access) to the RTO West footprint. The export fee is based upon the average cost of the RTO West transmission system (i.e., a system-wide postage stamp rate).

116. If transmission customers have the right to external interface access through converted pre-existing contracts with such rights, they will pay the Transfer Charge to maintain such rights. External interface access may be resold to other RTO West transmission customers, and, if purchased at full price, can be scheduled on any External Interface Point. If the export fee is discounted, it will only apply to the External Interface Point(s) and the time periods for which they were obtained. Discounting at one point will not require discounting at other points.

117. The Grid Management Charge is based on a formula rate designed to recover the administrative and operating costs of RTO West, including start-up and development costs. The Grid Management Charge is a volumetric charge (dollar-per-megawatt hour) which will be levied on all schedules on the RTO West system.

b. Comments

118. The Washington Commission supports the pricing proposal because it prevents cost shifting and includes an export fee for transactions through and out of the RTO West grid.

119. Aluminum Industrials argue that the conversion of point-to-point transmission contracts to RTO West transmission service is unreasonable. Aluminum Industrial assert that a point-to-point customer under an existing contract that wishes to convert to RTO service will pay a Transfer Charge based on the terms and billing determinants of that converted agreement for the full eight-year term of the transition period. If the existing contract would have expired during the transition period, RTO West will extend that contract for the remaining term of the transition period. They claim that network customers under pre-existing contracts do not face the same charges, and would pay the Company Rate for only the amount that they use (load ratio share). Aluminum Industrials assert that point-to-point transmission customers should be afforded the same flexibility as converting network transmission customers.

120. Aluminum Industrials contend that the Applicants do not sufficiently minimize cost shifts when charging the export fee. They state that, although the Applicants claim that the export fee was established to recover the lost short-term and non-firm revenues that made up a significant amount of the Applicants' revenue requirements, the export fee actually will recover only a portion of those potentially lost revenues because the use of

the system-wide average rate will lower the cost of transmission to some generators. Aluminum Industrials propose that the Applicants charge for exports based upon the greater of the postage stamp rate or the company rate (of the zone in which the transaction exited the RTO West system) to fully recover the lost revenues.

121. Aluminum Industrials also contend that certain costs not allowed for under the FPA may be included in the RTO West rates in order to fully compensate non-jurisdictional transmission-owning participants. They request that the Commission require that non-jurisdictional entities only allow RTO West to recover charges that are allowable under the FPA.

122. Duke contends that the export fee proposal is unjust and unreasonable as a result of the Applicants' disparate treatment of existing and new transmission users. According to Duke, the export fee allows Transmission Owners and customers with pre-existing transmission rights to external interfaces to have rights under RTO service that will allow them to avoid congestion and the export fee. However, new users will not be afforded comparable treatment. New users must obtain external interface transmission rights as well as pay the export fee for scheduled transfers.

123. Duke and Mirant object to the calculation of the Revenue Recovery Target based on historical transactions and suggests that the Commission direct the Applicants to calculate the Revenue Recovery Target based on reasonably expected transaction volumes.

124. Independent Energy Producers state that the export fee needs to be consistent with a seamless market. Independent Energy Producers clarify that, although they do not oppose the goal of ensuring equitable recovery of embedded costs from all users of the transmission system, the proposed export fee can balkanize markets and encourage retaliatory fees from adjacent RTOs. Independent Energy Producers urge the Commission to condition any acceptance of the export fee proposal upon the Applicants providing a mechanism to ensure that the export fee will only recover the proportionate share of embedded costs allowable to exports and demonstrating how price reciprocity among RTO West and adjacent RTOs will be achieved with the export fee proposal in place.

125. IPPs/Marketers and Mirant argue that the export fee is discriminatory. According to Mirant, the export fee proposal is discriminatory because existing customers with contracts that provide for external interface rights will only pay a Transfer Charge rather than the export fee, which creates a bifurcated system in which existing customers will have a higher class of service than new customers. Mirant states that eliminating access charges for exports and wheel throughs will reduce pancaking of access charges and

promote a national energy market with regional delivery capability. IPPs/Marketers ask that any approval of the export fee be only for a limited duration.

126. Montana Consumer Counsel, Truckee and Public Generating Pool argue that the use of a prospective two-year test period for determining the initial Company Rates should be rejected because it violates Commission filing regulations, may lead to unreasonable forecasts of costs, and introduces speculation into the rate setting process.

127. Montana Consumer Counsel also asserts that the details regarding the Replacement Revenue Pool and Backstop Recovery Mechanism must be clarified in order to properly evaluate the proposal. Northwest Requirements Utilities assert that the Grid Management Charge needs to be clearly defined so that it will not become a vehicle for recovery of unidentified costs. UAMPS asserts that the Commission should defer any action on the pricing methodology until the Applicants specifically request approval for particular aspects of the pricing methodology and provide clear support.

128. NIEC asserts that the pricing for each service should be based upon net load, not gross load. NIEC states that a customer that uses on-site (behind-the-meter) generation to satisfy all or part of its load only relies on the RTO grid to deliver unsatisfied requirements. Public Power Council requests that the Commission clarify that the definition of interconnected load be maintained as net load and that the billing determinants apply only to net load so that generation behind the meter is excluded from RTO charges.

129. Northwest Requirements Utilities and Public Power Council argue that the transition period for the transmission pricing proposal should be extended to ten years. Northwest Requirements Utilities state that the transmission pricing alone may not be the cause for cost shifting. Public Power Council argues that an eight-year transition period is too short to ameliorate cost shifts and rate shock, which is crucial to customer protection. Northwest Council and the Washington Commission support the proposal for an extended transition for an extended period of time due to the large number of non-jurisdictional utilities in the Northwest.

130. Public Generating Pool argues that the transmission pricing proposal will continue rate pancaking and will result in cost shifts. Public Generating Pool asserts that the export fee, the allocation of Replacement Revenue Pool amounts, and TOA costs are all forms of rate pancaking because they are separate charges for the recovery of the same capital costs.

c. Commission Determination

131. Applicants state that they seek approval only of the pricing methodology to be employed during the transition period. They further state that actual rate filings will be submitted before RTO West begins commercial operations. For purposes of this order, we will view this as a request for this Commission to make a determination on the reasonableness of the design of the license plate rate design and Export Fee.

132. In Order No. 2000, the Commission stated:

It is appropriate to allow RTOs to propose the use of license plate rates for a fixed term of the RTO's choosing. However, RTOs that propose the use of license plate rates must make clear how transmission expansion will be priced, that is, whether license plate rates or some other mechanism will be applied to the cost of new transmission facilities, and how such pricing affects incentives for efficient expansion. In addition, we will require that before the end of the fixed term, the RTO must complete an evaluation of fixed cost recovery policies based on the factual situation of the particular RTO, and file with the Commission its recommendations on any changes that should be instituted.^[63]

133. Applicants' license plate rate design is consistent with the requirements of Order No. 2000. Applicants' proposed Company Rate period is developed in a manner that will minimize cost shifts and loss of revenues. The length of the proposed transition period is intended to foster participation in RTO West by market participants, including public power entities. While the Standard Market Design NOPR contemplates a shorter transition period for conversion to service from an independent transmission provider under a single rate design,⁶⁴ we acknowledge the parties' concern for certainty with respect to potential cost shifts and the need for operating experience under RTO West transmission service to ensure that unanticipated costs or service problems are not encountered. Consequently, we will accept Applicants' proposal regarding the length of the Company Rate Period, but direct the RTO West Market Monitor (as discussed later in this order) to evaluate and report whether market efficiency improvement could be accomplished by a shorter transition period.

134. With respect to Aluminum Industrials' assertion that customers who suspend pre-existing point-to-point contracts and convert to RTO West service must pay a transfer charge for the entire company rate period, Applicants clarify that the protested provision

⁶³Order No. 2000 at 31,177.

⁶⁴Standard Market Design NOPR, at PP 167-178.

applies only to PTOs. As such, Aluminum Industrials, as customers of Bonneville, would not be responsible for a transfer charge but would pay Bonneville's Company Rate.

135. The use of a Grid Management Charge to recover costs of RTO West operations is reasonable. Intervenor has raised concerns regarding the Grid Management Charge, the pricing methodology, the lack detail of Applicants' proposed revenue recovery mechanisms, and whether services should be priced on gross or net loads. Applicants acknowledge that they have not developed the specific amounts that will be collected through each of the mechanisms, but will file them with the Commission for review before RTO West commences service. In addition, the definition of and the circumstances under which these rate mechanisms, as well as the conditions under which they will be assessed, must be included in the RTO West Tariff, which we have directed Applicants to file within 120 days. Intervenor will have the opportunity at that time to raise their specific concerns regarding the definition and accompanying explanations of the interrelationships of these transmission pricing elements.

136. Applicants' proposal to assess an export fee based on the average cost of the RTO West transmission system is reasonable as a transitional pricing mechanism. Absent the imposition of an export fee or some other mechanism to recover the cost of transmission, customers outside the RTO West footprint would not contribute in the recovery of the cost of the transmission system. Duke's concern that disparate treatment is given to existing and new transmission users is not on point. In an attempt to avoid cost shifts, Applicants provide the opportunity for users with existing contracts to retain such rights; all new users will be subject to the same rules for exporting power from the RTO West footprint. As noted above, Applicants and other entities throughout the West have formed an organization that is exploring, among other things, price reciprocity between RTOs in the West. We look to Applicants to continue their efforts to address this issue through the Steering Group, with the goal of assigning the costs of transmission to load regardless of its location rather than to the supplier of the energy.

137. Finally, regarding the PTOs' use of a two-year prospective test period for development of their transmission revenue requirements, we direct Applicants, upon submittal of their respective filings to establish their initial revenue requirement, to justify the use of a two-year prospective test period.⁶⁵

3. Interconnection Service

⁶⁵The Commission's filing requirements permit the use of test periods reflecting future periods upon which to calculate rates; however, such future test period must begin no later than three months after the date on which the rate is proposed to become effective. See 18 C.F.R. § 35.13(d)(3)(ii)(B) (2002).

a. Applicants' Proposal

138. Applicants state that RTO West will have authority over interconnections of generation and load to the RTO West-Controlled facilities. However, interconnections to facilities that are not under the operational control of RTO West will be performed in accordance with the individual PTO's interconnection policies and standards, with disputes resolved through the RTO West dispute resolution process.⁶⁶

b. Comments

139. Certain intervenors take issue with the control PTOs will have in the RTO West interconnection service process. IPPs/Marketers state that the interconnection proposal assigns too much control to the PTOs. They argue that the generation interconnection authority should be under the control of the RTO. UAMPS states that several sections of the TOA give Applicants control over decisions made by RTO West. UAMPS notes that Section 5.1 of the TOA requires RTO West to apply the transmission owner's standards to any requests to interconnect with the RTO West grid. UAMPS asserts that the TOA should be revised to eliminate the transmission owners' ability to control RTO West's decision making.

140. Public Interest Organizations argue that the Commission should require the adoption of uniform interconnection standards for RTO West. They claim that the TOA will allow PTOs to establish non-uniform terms, as long as the terms adhere to the same standards. Williams states that the Commission should require centralized interconnection studies.

141. Public Interest Organizations also state that the interconnection standards must differentiate between large and small projects. Small renewable capacity and distributed generation should not be required to undertake all of the procedural and technical steps necessary for large projects because they have little impact on the grid.

c. Commission Determination

142. We find that the limitations on the ability of RTO West to administer requests for new interconnections are inconsistent with Order No. 2000. In administering its tariff, the RTO must have the sole authority for the evaluation and approval of all requests for

⁶⁶See Stage 2 Filing at 35-37 and Section 5 of the TOA.

transmission service, including requests for new interconnections.⁶⁷ Under the Applicants' proposal, although requests for interconnection will be administered by RTO West, the applicable standards for interconnection will be each PTO's standards for interconnection to its individual system. Accordingly, we will require that the Applicants develop, through a stakeholder process, standards for interconnection for the RTO as a whole, to be administered solely by RTO West for all interconnection requests. This will allow for a consistent interconnection policy to be applied throughout the RTO West transmission system. The RTO-wide interconnection standards developed by RTO West must be consistent with the final rules regarding generator interconnection.⁶⁸

RTO Function No. 2: Congestion Management

The RTO must ensure the development and operation of market mechanisms to manage transmission congestion. The RTO must satisfy the market mechanism requirement no later than one year after it commences initial operation. However, it must have in place at the time of initial operation an effective protocol for managing congestion.

1. Applicants' Proposal

a. Background

143. Applicants state that the inventory of resources within the RTO West geographical area is unique. In the Northwest, approximately 90 percent of existing generation capacity (and more than 90 percent of the energy) is produced by two generation types: hydroelectric projects and baseload thermal plants (such as coal-fired and nuclear generators). Less than 5 percent of the existing capacity in the Northwest consists of intermediate and peaking units. Most of the thermal units are operated at or near maximum output at all times (fully loaded), except when off-line for maintenance or forced outages. In contrast, the loading levels of hydroelectric units, which generally can reach full output from start-up within minutes, are highly variable. Applicants state that these unique characteristics were important considerations in developing the RTO West Congestion Management proposal.

⁶⁷Order No. 2000 at 31,108.

⁶⁸See Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 67 Fed. Reg. 22,249 (May 2, 2002), FERC Stats. & Regs. ¶ 32,560 (2002). See also Standardization of Small Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 67 Fed. Reg. 54,749 (Aug. 26, 2002), FERC Stats. & Regs. ¶ 35,544 (2002).

144. Applicants state that the coordinated resource system is characterized by an interdependency between hydroelectric and thermal resources where dispatch decisions for any given unit can affect the commitment and availability of other units.⁶⁹ In order for its resources to operate at their greatest efficiency within energy and non-power constraints,⁷⁰ operations must be coordinated to optimize energy production in the system as a whole over the entire season.⁷¹ As a result, Applicants claim that many hydroelectric projects cannot be dispatched independently and short-term marginal-cost production concepts are not adequate for determining the resource value of hydroelectric generation. For these reasons, Applicants state that the RTO West congestion management system must conform to certain principles: (1) the pre-scheduling process must allow for voluntary, decentralized unit commitment and dispatch, so that coordinated hydroelectric and thermal system operations can continue for the entire Northwest; (2) least-cost dispatch solutions must rely on a system of voluntary bidding; (3) new day-ahead and real-time markets must accommodate the Northwest's bilateral forward trading markets; and (4) instruments for hedging against congestion charges should be financial options, rather than obligations.

b. Locational Pricing

145. The RTO West congestion management proposal provides for a market-based system to clear congestion using locational bid-based prices at each bus on the RTO West

⁶⁹Applicants note that this contrasts with predominantly thermal-based resources systems in other regions, in which unit commitment decisions can be made independently.

⁷⁰Non-power constraints include flood control, reservoir refill, navigation, irrigation, recreation, municipal and industrial water supply, endangered species protections and other environmental regulations.

⁷¹Because projects of the coordinated hydro/thermal resource system interact with each other, protocols have been developed over the years to manage the operation of these resources efficiently, and have been incorporated into various contractual arrangements. In the Northwest, these include: (1) the Columbia River Treaty between the United States and Canada that governs operations of the Canadian storage reservoirs in the Columbia River Basin; and (2) the Pacific Northwest Coordination Agreement which coordinates operations within the limits of applicable non-power constraints. In addition, some utilities are parties to the Mid-Columbia Hourly Coordination Agreement which enables Mid-Columbia hydroelectric facility operators to coordinate the daily operations of each Mid-Columbia project, with the other projects and the overall resources in the Northwest system.

transmission system. Applicants propose that the congestion management mechanism be used at the start up of RTO West commercial operations. The congestion management proposal relies on a voluntary bidding process open to generators and dispatchable loads. During the scheduling process (described below), Scheduling Coordinators voluntarily can submit inc and dec bids. Using the scheduling requests it receives, RTO West will analyze the resulting power flows for congestion problems.⁷² RTO West will use the bids received in a security-constrained, least-cost dispatch to calculate the marginal cost to serve the next increment of load at each bus in the system.⁷³ Congestion charges will be based on the difference in bus prices between each schedule's injection and withdrawal points (which are then multiplied by the size of the schedule). Applicants state that this process will provide RTO West transmission customers with efficient price signals that show the consequences of their transmission use decisions.

c. Scheduling and Settlement Process

146. Under the proposal as developed to date, Scheduling Coordinators will be required to submit initial scheduling requests in the day before operations (which Applicants refer to as "the Day-Ahead").⁷⁴ Scheduling Coordinators will be required to submit balanced schedules.⁷⁵ Applicants indicate that requirement for balanced schedules: (1) reflects the fact that historically the Northwest has relied almost exclusively on bilateral contracting; and (2) ensures that all load scheduled has a corresponding supply associated with it, which, according to Applicants, will ease the pressure on ancillary and real-time energy

⁷²According to the proposal, RTO West will seek redispatch solutions only to relieve congestion based on the submitted schedules.

⁷³Applicants state that, although locational prices under the RTO West congestion management proposal will reflect the lowest bid price for the next increment of energy delivered to a particular location, those bid prices will not necessarily reflect the marginal production costs of the energy supplier.

⁷⁴Applicants indicate that many of the details of the congestion management proposal will be developed once their ancillary services proposal is completed. In particular, rules for Scheduling Coordinators to modify their schedules after the initial scheduling process are to be developed. However, at this time, Applicants assume that the scheduling process will consist of a two-settlement process (one after the close of the initial Day Ahead scheduling process and again in real time).

⁷⁵For each schedule request, the amount of energy scheduled for delivery to the injection locations must equal the amount of energy to be delivered to the withdrawal locations (taking into account real energy losses).

imbalance markets. Applicants indicate that the balanced schedule requirement design will not restrict the ability of Scheduling Coordinators to trade imbalances, which was not permitted in other markets, which observed a balanced schedule requirement for each individual schedule. This is reflected by the fact that the acceptance of inc and dec bids submitted in the initial scheduling process will not be limited to the bidder's schedule, but rather bids can be applied to clear congestion on the RTO West system in general.⁷⁶ As a further incentive to Scheduling Coordinators to forecast load and bring sufficient resources to satisfy their load schedules, Applicants indicate that energy imbalance and load scheduling penalties will be proposed as part of its Ancillary Services proposal, which is to be developed.⁷⁷

147. Scheduling Coordinators may submit any schedule request they choose, if they are willing to bear congestion charges resulting from such schedule.⁷⁸ RTO West's ability to accept all schedule requests will be limited by their technical feasibility, *i.e.*, RTO West's inability to resolve an aggregate set of scheduling requests because they cannot be physically accommodated (despite implementing all redispatch options) within the operational security constraints of the RTO West system.

148. At the close of the initial period for scheduling requests, RTO West will analyze the resulting power flows for congestion. RTO West will then purchase (based on the inc

⁷⁶Under such mechanism, after clearing for congestion problems, individual schedules may become "unbalanced" although the aggregate set of schedules to be implemented by RTO West will remain balanced.

⁷⁷Applicants state that energy imbalance penalties will be assessed for energy imbalances that exceed a reasonable use threshold, but that a such penalties will be determined only after Scheduling Coordinators have the opportunity to trade hourly imbalances obligations with other Scheduling Coordinators. Applicants believe this design will discourage Scheduling Coordinators from over-reliance on RTO West's provision of real time balancing energy to balance their loads and resources. Similarly, Applicants believe that hourly load scheduling penalties for significantly under-scheduling or over-scheduling load during the initial "Day Ahead" scheduling process will encourage Scheduling Coordinators to submit accurate forecasts of demand to RTO West.

⁷⁸Scheduling Coordinators do not need to have a Catalogued Transmission Right or a Financial Option in order to submit a schedule. If it does not have such rights or option, the Scheduling Coordinator may either specify a limit on the maximum congestion charges to have its schedule implemented or may submit a schedule with a commitment to pay whatever congestion clearing charges apply.

and dec bids received) the most economic redispatch available to enable it to implement all schedules as requested. Schedule requests with congestion price limits less than RTO West's forecast of congestion clearing charges for the hour will be automatically withdrawn and the remaining schedules will become financially firm. The close of the "Day-Ahead" scheduling process will be followed by a settlement against those schedules, *i.e.*, Scheduling Coordinators will become responsible for the congestion clearing charges associated with the initial schedules. Because the initial "Day Ahead" schedules will be financially binding, and with the balanced schedule requirement and proposed penalties for significant deviations from those schedules, Applicants' congestion management proposal is designed to avoid over-reliance on real-time energy imbalance markets and cost shifts to other Scheduling Coordinators.

149. After the initial "Day Ahead" scheduling process, Applicants anticipate that Scheduling Coordinators will be able to modify their schedules prior to real time operation, under rules to be developed.⁷⁹ Following system dispatch in a given operating hour, a second settlement will take place where Scheduling Coordinators will be charged for congestion charges associated with any modifications to their "Day Ahead" schedules, as well as for an imbalance between actual and scheduled energy injections and withdrawals.

c. Options to Hedge Against Congestion Charges

150. The RTO West congestion management proposal provides Scheduling Coordinators two options to hedge themselves financially against congestion charges using, as described previously in this order: (1) the Catalogued Transmission Rights assigned during the conversion process; or (2) Financial Options available through the contract conversion election process. Schedules that are submitted consistent with the terms of Catalogued Transmission Rights will receive credits equal to any congestion charges associated with those schedules. Catalogued Transmission Rights may not be traded; if a Scheduling Coordinator desires the tradability and flexibility associated with Financial Options (as described below) it will have to make the election in converting its contract to receive Financial Options.

151. Under the RTO West congestion management proposal, Financial Options give the holder the right to receive a credit from RTO West equal to: (1) the congestion price differential (within a specified hour) between its defined withdrawal and injection

⁷⁹ Applicants also indicate that special rules will be developed to address schedule modifications due to forced outages.

locations, multiplied by (2) the megawatt quantity specified in the Financial Option.⁸⁰ Financial Options confer no physical rights to schedule on the RTO West system. Financial Options do not have any accompanying obligation for the holder to pay congestion charges to RTO West. While the value of Financial Options can be positive or zero, they can never be negative. A Financial Option has value only to the extent it is redeemed to receive credit against congestion charges a Scheduling Coordinator incurs during the hour specified in the Financial Option.

152. Although the value of a Financial Option is determined based on the price differential between its specified withdrawal and injection points, the use of a Financial Option as a credit to offset congestion charges is not limited to the injection and withdrawal points on which the option's value was calculated. Financial Options may be applied to any schedule that results in congestion charges during the operating hour defined in the Financial Option. In addition, Financial Options may be freely traded in secondary markets.⁸¹ A Financial Option may be divided and resold in temporal and quantity sub-parts. However, if a Financial Option has a value that is greater than the cost of congestion to which it is to be applied, the surplus value of the Financial Option cannot be used to offset congestion charges in other hours.

153. After the initial allocation of Financial Options, RTO West will undertake studies to determine opportunities for additional Financial Options to be issued. RTO West will release additional Financial Options through an auction process. The auctions, which will be held at periodic intervals, will release Financial Options of various durations (such as one year, one month, one week). RTO West will determine what sets of Financial Options it will auction based on the combination of releases that will maximize the number of and total revenue from Financial Options, consistent with feasibility and risk management criteria.

154. Applicants claim that the use of options provide better incentives for parties to schedule efficiently and accurately, since a Financial Option is of no value if the holder does not schedule. They assert that a liquid market for trading Financial Options will develop, since those holding Financial Options with no value will likely sell them to those who do value the hedge against congestion. Applicants also claim that reliance on options rather than obligations will increase the likelihood that schedule requests correspond closely to the physical capability of the transmission system.

⁸⁰The Congestion price differential is determined by subtracting the congestion price at the injection location from the congestion price at the withdrawal location.

⁸¹RTO West may adopt rules that enable it to verify the validity of Financial Options and track their ownership as appropriate.

2. Comments

155. Alberta Intervenors, Northwest Council and the Oregon Commission support the proposed voluntary bid-based system of congestion management because it gives hydro plant operators needed flexibility in their marketing decisions. The Washington Commission asserts that nodal pricing should be limited to the clearing of congestion only.

156. While generally supporting the Applicants' congestion management proposal, PNGC contends that the use of market clearing prices at the bus to relieve congestion caused by path de-ratings will cost the entire system more in congestion charges than is necessary, because the costs will be socialized. PNGC and Duke state that the provisions of the congestion management proposal require clarification and further explanation.

157. Duke, Industrial Customers, IPPs/Marketers, Montana Consumer Counsel and Williams argue that the congestion management proposal should be made consistent with elements of the Commission Staff's Standard Market Design Working Paper, including locational marginal pricing (LMP). Montana Consumer Counsel suggests that Applicants be required to justify the deviations from Standard Market Design and demonstrate that their proposed congestion management provisions are superior.

158. Montana Consumer Counsel contends that Applicants' proposal to require receipt of congestion rents only when congestion exists will restrict ownership of Financial Options, limit the tradability of such instruments and diminish the chances for a liquid market for trading them. Montana Consumer Counsel also asserts that the use of options as transmission rights will diminish the number of transmission rights to be auctioned.

159. IPPs/Marketers state that the Commission should: (1) require the proposal to be updated and made consistent with Standard Market Design; (2) direct Applicants to incorporate a voluntary day-ahead energy market and dispatch process; (3) reject the proposed cataloguing of existing rights; and (4) direct Applicants to file additional details regarding contract conversion and the requirements for Congestion Management Assets.

160. The Oregon Commission supports defining transmission rights as options. Mirant asserts that Financial Options should be obligations, and that they should be pure financial instruments and not be tied to the actual physical transaction. Mirant asserts that linking Financial Options to the physical transaction will preclude participation in the market by financial intermediaries (those that have no physical position), and thereby reduce liquidity in the market.

161. Aluminum Industrials states that the congestion management proposal may provide an opportunity for an existing transmission owner to take advantage of other PTOs' Congestion Management Assets because the Congestion Management Assets will not be maintained by the RTO on an individual PTO basis, but will be used to satisfy all existing contract obligations for RTO West as a whole.

162. Some intervenors say that flaws in Applicants' congestion management proposal may enhance the ability of sellers of energy to exercise market power. Public Generating Pool and Public Interest Organizations assert that the proposal does not establish clear and tradable rights for transmission usage and that there is no expectation that a pre-existing contract customer will elect to convert its Catalogued Transmission Rights to Financial Options.

163. Public Generating Pool, Wyoming Energy Consumers and Public Interest Organizations contend that the congestion management proposal will fail to promote efficient dispatch and a competitive marketplace because the voluntary bidding process will permit economic and physical withholding of generation. According to Wyoming Energy Consumers, price signals based on voluntary bids may have no relationship to marginal or opportunity costs. Public Generating Pool notes that the proposal relies on subjective evaluations of marginal costs, and asserts that the RTO West market monitor will have no ability to judge the accuracy or reasonableness of voluntary bids. Wyoming Energy Consumers also contend that the pricing system will shield existing suppliers from congestion charges and transmission reservation fees, and will put new market participants at a disadvantage.

164. Nucor asserts that native load customers should be entitled to the revenues derived from the auction of Financial Options in proportion to their share of embedded costs. Nucor supports the proposal that all Scheduling Coordinators be required to submit balanced schedules.

165. Montana Consumer Counsel claims that the proposed congestion management model will allow RTO West to take financial risks when issuing additional transmission rights and requests that the Commission prohibit RTO West from holding positions in markets in which it operates and require RTO West to be a neutral transmission grid operator.

166. Industrial Customers note that the TOA requires that RTO West implement a congestion management system consistent with the TOA and the congestion management proposal, as it may be defined. Industrial Customers assert that this gives RTO West unfettered ability to make changes to the congestion management proposal after Commission approval. Industrial Customers further argue that incentives for early

scheduling of Catalogued Transmission Rights (TOA section 9.5) may be inappropriate because the release of additional transmission capacity entitlements will result in increased rates to end-use customers.

3. Commission Determination

167. In Order No. 2000, we required that an RTO must operate or have an independent entity develop and operate mechanisms to manage transmission congestion. Such mechanisms were to provide all transmission customers with efficient price signals regarding the consequences of their actions in an accurate and timely manner. The Commission concluded that market mechanisms were superior to administrative curtailment procedures to manage congestion. We concluded that a workable market solution should establish clear and tradable rights for transmission use, promote efficient regional dispatch, support the emergence of secondary markets for transmission rights, and provide market participants with the opportunity to hedge locational differences in energy prices.⁸² Applicants' proposal to use a market-based mechanism that calculates locational prices at each bus on the RTO West transmission system to manage congestion satisfies the requirements of Order No. 2000 regarding congestion management protocols. Applicants will operate a real-time energy imbalance market to manage congestion that occurs after the Day-Ahead scheduling process. The congestion management proposal will rely on the calculation of energy prices at the various injection and withdrawal points of transmission schedules on the RTO West system. Transmission congestion will be managed through a voluntary system of inc and dec bids. Financial Options can be used as a hedge against congestion charges, with the ability to trade such options in a secondary market.

168. Many of these elements are similar in concept to our Standard Market Design NOPR, which proposes that independent transmission providers to manage transmission congestion using locational marginal prices and congestion revenue rights in conjunction with the operation of day-ahead and real-time energy and ancillary services markets.⁸³ Some aspects of the proposal, notably the balanced schedule requirement, the use or lose nature of Financial Options, and the absence of a Day-Ahead energy market, reflect differences from the market design suggestions included in our Standard Market Design NOPR. Certain details of RTO West's congestion management proposal require further development and explanation. Specifically, we direct Applicants to demonstrate that their proposal does not create seams with other RTOs contemplated in the Western Interconnection. In the Standard Market Design NOPR, the Commission noted the

⁸²Order No. 2000 at 31,126-27.

⁸³Standard Market Design NOPR, at PP 203-283.

unique challenges associated with establishment of locational prices for hydroelectric resources in the Northwest.⁸⁴ In order that the requirements for establishing a congestion management system based on locational prices for RTO West are fully understood and appropriately incorporated into the structure of RTO West operations, we direct Applicants to hold additional discussions among stakeholders through the RRG process, and we direct staff to hold technical conferences to develop the remaining aspects of the RTO West congestion management proposal (including, but not limited to, the cataloguing of transmission rights, the development of locational prices, the development of scheduling rules after the close of the "Day-Ahead" scheduling process, exploring circumstances that would permit filing of unbalanced schedules, identifying incentives and disincentives to the use or lose nature of Financial Options, whether the establishment of a Day-Ahead energy market could provide additional efficiencies to market participants and some assessment of the costs of administering this system), and to address other issues discussed in this order regarding Applicants' proposal. We expect that the technical conferences will inform our action as we develop a final rule for Standard Market Design.

169. We agree with Applicants that a liquid secondary market may develop. Because those that value Financial Options for specific injection and withdrawal points will bid for unused Financial Options, hoarding should not occur; the bid will create value for the unused FTO that should be greater than holding the FTO.

170. We will not require the proposal to limit the ability of RTO West to create additional Financial Options through redispatch, as requested by the Montana Consumer Counsel. The proposal allows RTO West to maximize the creation of Financial Options. Furthermore, there is no clear indication to show the level of risk placed on RTO West through this process. We direct the RTO West Market Monitoring Unit, when established, to monitor and evaluate the impact of these types of activities by RTO West.

171. We disagree with Industrial Customers that RTO West may make unilateral changes to the congestion management proposal after Commission approval. RTO West as the jurisdictional transmission provider, must file modifications to its congestion management proposal with the Commission for approval under section 205 of the Federal Power Act..

172. With regard to Industrial Customers' contention regarding the incentives for Catalogued Transmission Rights to be released through early scheduling of such rights, Industrial Customers have not demonstrated that costs to end users will increase. The intention of incentive for early scheduling should provide RTO West with the ability market any additional transmission capacity created through aggregation of such early

⁸⁴Id., at PP 212-217.

schedules. This process should result in opportunities for additional transactions to be scheduled, which, in turn, would create additional transmission revenues that would offset PTOs' company costs.

RTO Function No. 3: Parallel Path Flow

The RTO must develop and implement procedures to address parallel path flow issues within its region and with other regions. The RTO must satisfy this requirement with respect to coordination with other regions no later than three years after it commences initial operations.

1. Applicants' Proposal

173. Applicants state that RTO West will continue to participate in the existing WECC Unscheduled Flow Mitigation Plan (Flow Plan)⁸⁵ and will manage congestion within its footprint using a financial, security-constrained (e.g., limitations on flows resulting from the coordinated interactions among hydroelectric projects) locational pricing model.

174. As noted previously, Financial Options will be the principal tool Scheduling Coordinators will use to hedge against congestion charges. The injection and withdrawal points that define an FTO are determined based on actual flows across the entire network, limited by security-constrained Total Transmission Capability on various links within the network. RTO West will calculate flow distribution factors using a full Western Interconnection physical system network representation, including the effects of phase shifters. This process, according to Applicants, takes parallel path flows into account.

175. With respect to elimination of parallel path flows between RTO organizations, Applicants state that this issue, along with other seams issues, currently is being explored by several organizations in the Western Interconnection, including the Steering Group and the Western Market Interface Committee (WMIC).⁸⁶

2. Comments

⁸⁵The Flow Plan identifies those facilities of WECC members that can be used to control loop flow and allocates costs according to a formula to each of the WECC members. The formula allocates costs on the basis of scheduled energy imports, scheduled energy exports, generating resources and loads.

⁸⁶WMIC is a working group of the Western Electricity Coordinating Council (WECC).

176. Public Generating Pool argues that the RTO West Stage 2 proposal does not fulfill the parallel path flow requirements of Order No. 2000 because Applicants merely state that loop flows will be mitigated by the proposed congestion management model and implementation of RTO West's Western Market Vision. Public Generating Pool believes that, because the congestion management proposal will fail and the "vision" has not been adequately described, the Commission cannot conclude that the RTO West proposal will satisfy the parallel path flow requirement of Order No. 2000.

3. Commission Determination

177. Applicants' process to manage congestion in the RTO West footprint will include consideration of parallel path flows as part of the analysis. In addition, RTO West will continue to use the existing Flow Plan for the Northwest. Consequently, RTO West satisfies the Order No. 2000 requirements for addressing such flows within the transmission system it will operate. We note that the Flow Plan has not been amended to accommodate regional transmission organizations; however, the Steering Group and WMIC have indicated that this issue is the subject of ongoing regional discussions. We will review any additional procedures for mitigating loop flows when they are filed to determine whether parallel path flows in the West are appropriately addressed. The Standard Market Design NOPR requests comments regarding how to apply inter-regional pricing to parallel path flows.⁸⁷ Because this issue is currently being studied by the Steering Group and others, we direct Applicants to include recommendations to address parallel path flows between RTOs in the West as part of the filing that it is required to file, as discussed later in this order.

RTO Function No. 4: Ancillary Services

The RTO must serve as a provider of last resort of all ancillary services required by Order No. 888 and subsequent orders.

1. Applicants' Proposal

178. Applicants indicate that, although a detailed proposal has not yet been developed, their ancillary services plan will complement the proposed congestion management model and will build upon bilateral ancillary services markets that exist in the West. In developing an ancillary services plan, RTO West commits to: (1) operate a real-time balancing market; (2) be the provider of last resort for all ancillary services; (3) develop a competitive ancillary services procurement process; (4) have direct or indirect operational

⁸⁷Standard Market Design NOPR, at P 190.

control over all participants who bid in the procurement process;⁸⁸ and (5) determine minimum required amounts of ancillary services.

179. RTO West will offer to provide the following ancillary services: (1) Regulation and Frequency Response; (2) Load Following Up; (3) Load Following Down; (4) Spinning Reserve; (5) Non-Spinning Reserve; (6) Replacement Reserve; (7) Congestion Redispatch; (8) Supplemental Energy; (9) Balancing Energy; (10) Voltage Support; (11) Black Start, and (12) Scheduling and Dispatch.

180. Applicants state that Scheduling Coordinators will have two options to self-supply certain ancillary services: "self-tracking"⁸⁹ and "self-provision."⁹⁰ In addition, Scheduling Coordinators may use their own generation/demand-side resources or make forward arrangements if they meet certain technical requirements to receive credit for self-supplying

181. As noted previously, Applicants include in their conceptual plan for ancillary services certain penalties to provide incentives or disincentives for Scheduling Coordinators to schedule accurately and not over-rely on RTO West's energy imbalance ancillary service to balance their load and resources. RTO West would accomplish this through the assessment of energy imbalance penalties as well as load scheduling penalties. RTO West, however, has not developed specific proposals to implement these penalty mechanisms.

2. Comments

⁸⁸RTO West will acquire resources to needed to provide ancillary services through auction or other competitive procurement mechanisms based on voluntary market-based bids for such services supplied by Scheduling Coordinators.

⁸⁹"Self-tracking" means that Scheduling Coordinators use their own resources or resources under contract to meet their needs for Regulation and Frequency Response Service and Load Following services in order to be exempt from all or part of RTO West charges. Scheduling Coordinators may also choose to self-track other ancillary services or obtain them through the procurement process. However, Scheduling Coordinators that self-track will be assessed congestion charges associated with the use of their resources for self-tracking. If the Scheduling Coordinator has Catalogued Rights or Financial Options, these charges will be offset by the credit associated with the CTR or FTO.

⁹⁰"Self-provision" means that Scheduling Coordinators will provide the Interconnected Operations Services for Regulation and Frequency Response, Load Following (Up and Down), and Spinning and Non-Spinning and/or Replacement Service and will be exempt from RTO West charges for procurement of these services.

182. Several intervenors object to the lack of detail provided by the Applicants with respect to the ancillary services function.

183. Nucor maintains that RTO West should not only allow, but also facilitate, the participation of loads in the ancillary services market. Nucor requests that the Commission require RTO West to take affirmative steps to encourage direct participation of loads. It argues that any provision that penalizes market participants that mismatch schedules should be narrowly tailored to apply only to those market participants who try to game the system, rather than to those who make a good faith effort to submit accurate schedules.

3. Commission Determination

184. Order No. 2000 states that: (1) the RTO must serve as supplier of last resort for all ancillary services required by Order No. 888; (2) all market participants must have the option of self-supplying or acquiring ancillary services from third parties; (3) the RTO must have the authority to decide the minimum required amounts of each ancillary service and, if necessary, the locations at which these services must be provided; (4) the RTO must be able to exercise direct or indirect operational control over all ancillary service providers; (5) the RTO must promote the development of competitive markets for ancillary services whenever feasible; and (6) the RTO must ensure that its transmission customers have access to a real-time balancing market. As part of its conceptual plan, RTO West has committed to providing all of the elements required to satisfy the ancillary services requirements of Order No. 2000. Our Standard Market Design NOPR also proposes that requires the same ancillary services be offered by the independent transmission provider, although it must offer such services using market-based mechanism.⁹¹ As noted above, Applicants commit to providing ancillary services that conforms to Order No. 2000 requirements; however, Applicants have not developed a detailed proposal for Commission review. We direct Applicants to file a detailed ancillary services proposal as part of the RTO West Tariff.

185. Although Order No. 2000 does not require an RTO to facilitate and encourage direct participation of loads, RTO West's conceptual plan indicates that load response will constitute wherever possible a potential supplier of ancillary services. In addition, our Standard Market Design NOPR proposes to include demand participation in ancillary services.⁹² Consequently, we believe that Nucor's concerns regarding facilitation of load participation are premature. When RTO West files its detailed ancillary services

⁹¹Standard Market Design NOPR, at PP 164 and 284-287.

⁹²Id.

proposal, Nucor will have the opportunity to raise concerns whether load participation has been facilitated. In addition, because RTO West has not proposed the method by which penalties for excessive energy imbalances will be assessed, we find Nucor's objection to be premature.

RTO Function No. 5 - OASIS, Total Transmission Capability (TTC) and Available Transmission Capability (ATC)

The RTO must be the single OASIS site administrator for all transmission facilities under its control and must independently calculate TTC and ATC.

1. Applicants' Proposal

186. Applicants state that RTO West will maintain and administer its own OASIS site and will be responsible for calculation of TTC and ATC. Applicants note that in a financially based, accept-all-schedules system of congestion management, participants that wish to request transmission service from RTO West need not rely on posted ATC. Instead, participants will evaluate the financial consequences of scheduling their desired transactions based on the availability of congestion hedges and the projected charges for congestion needed to implement their schedules.

187. Applicants reiterate that they have been working through the Steering Group to create a single point of access for OASIS sites for all RTOs in the West. RTO West will (1) provide the OASIS information and access that market participants require; (2) determine the physical transfer capabilities of its transmission system; (3) assess anticipated use of physical capacity based on outstanding congestion rights that may be exercised, then determine how much remaining capacity is available to support the issuance of additional rights; and (4) make this information available to all market participants on a non-discriminatory basis.

2. Comments

188. Public Generating Pool requests that RTO West calculate ATC values based on data developed exclusively by the RTO. Offers of ATC would then be made by RTO West. Public Generating Pool emphasizes that non-federal entities cannot offer to sell capacity on federal transmission lines. As a result, Public Generating Pool claims that the Stage 2 proposal cannot fulfill this function.

189. Industrial Consumers state that Section 6.75 of the TOA allows only PTOs to dispute RTO West's calculation of ATC and TTC through Dispute Resolution provisions of Section 20. Industrial Consumers requests that the Commission ensure that all affected

parties, including loads, generators, other transmission providers, can dispute RTO West's calculation of ATC and TTC.

190. Applicants respond that the RTO West tariff will provide a means for all customers to dispute ATC and TTC calculations.

3. Commission Determination

191. Applicants' proposal satisfies the requirements Order No. 2000 for OASIS, TTC and ATC calculations. As Applicants state, the RTO West tariff will provide the means for all customers to dispute ATC and TTC calculations. Therefore, we will not require that all customers should have the right to dispute these calculations under the TOA. The RTO West Tariff is the appropriate forum to challenge the method of calculating ATC and TTC. Once the tariff is filed, parties will have the opportunity to comment whether adequate ability to contest calculations is provided in the RTO West Tariff. With respect to Public Generating Pool's concerns, our acceptance of the RTO West proposal to create an OASIS does not eliminate the need for any federal participant in RTO West, including Bonneville, to abide by applicable statutory requirements to participate in RTO West.

192. The Standard Market Design NOPR contemplates a common OASIS for the region and that TTC and ATC calculations be made by an independent entity.⁹³ The efforts underway by parties in the West should result in successful compliance with these requirements. We look to Applicants' participation in the Steering Group to continue discussion concerning the development of a common OASIS for all RTOs in the Western Interconnection and direct it to include recommendations on this issue in the required report.

RTO Function No. 6: Market Monitoring

To ensure that the RTO provides reliable, efficient and not unduly discriminatory transmission service, the RTO must provide for objective monitoring of markets it operates or administers to identify market design flaws, market power abuses and opportunities for efficiency improvements and must propose appropriate actions.

1. Applicants' Proposal

193. Applicants state that they are working towards the development of a single market monitoring entity for the Western Interconnection. Representatives of RTO West, California ISO and WestConnect, together with transmission customers, public power

⁹³Standard Market Design NOPR, at PP 333-334.

entities, and state public utility commissions, have formed a Market Monitoring Working Group and are developing a proposal for a West-wide market monitoring entity. The Market Monitoring Working Group has identified several areas of consensus.⁹⁴

194. In the interim, however, Applicants submitted in the Stage 2 Filing a proposal for a single RTO West Market Monitoring Unit (MMU) that incorporates the areas of consensus reached through the Market Monitoring Working Group. Applicants state that the Stage 2 proposal builds upon the earlier filing by strengthening the independence of the MMU. Under this modified proposal, the MMU has the discretion to report its findings directly to the Commission, the United States Department of Justice, state and provincial regulatory and enforcement entities, and the RTO West Board. In addition, under the current proposal: (1) government entities will be provided an annual report;⁹⁵ (2) MMU Staff will be separate from the RTO West Staff; (3) the MMU Director will be selected by RTO West Board, subject to procedural protections to ensure independence; and (4) the MMU will address customers' complaints that RTO West does not properly enforce provisions of its tariff.

195. Applicants state that the MMU's market monitoring responsibilities will extend only to monitoring RTO West Markets.⁹⁶ The MMU may gather any publicly available data and information and perform any analysis pertaining to such other markets that it

⁹⁴The areas of consensus include: (1) the Market Monitoring Entity (MME) should be independent from RTOs and market participants; (2) RTO Boards will not act as a screen for MME reports and recommendations; (3) the MME will have a direct relationship with federal, state and provincial regulatory enforcement entities; (4) all RTO markets will be monitored; (5) MME will monitor, identify anomalous market performance, perform studies to determine cause, and report results to regulatory and enforcement entities as appropriate; (6) MME will use objective standards and professional judgment to evaluate market performance and identify anomalous market performance; (7) MME will monitor and evaluate RTO market design and, in cooperation with RTO staff, recommend market design and rule changes; and (8) MME will monitor compliance with Commission-imposed mitigation measures and RTO-designed, Commission-approved mitigation measures.

⁹⁵Applicants do not describe the contents of the annual report, but state that they will work with the Commission and stakeholders to develop its content requirements.

⁹⁶RTO West Markets are limited to those markets that are operated or administered by RTO West. These markets may include an imbalance energy market, a congestion management market or system, an ancillary services market, a market for the purchase or sale of transmission rights, and any other market operated or administered by RTO West.

determines appropriate to fulfill its market monitoring responsibilities. These markets may include, without limitation, gas and fuel markets, spot markets, fuels transportation markets, and futures markets. The MMU may periodically assess the effect of bilateral energy or capacity markets, or private transmission rights not administered, coordinated, or facilitated by RTO West, on RTO West Markets or the effects of RTO West Markets on such markets. The scope of any such assessments shall be limited to those required to fulfill Order No. 2000 requirements.

2. Comments

196. Independent Energy Producers argue that the RTO West Board, its staff and all stakeholders should have the opportunity to address issues raised by the MMU before submissions are made to the Commission.

197. Mirant argues that structural and procedural protections must be in place to ensure that the MMU is truly an independent, stand-alone entity, and not a subdivision of RTO West. Mirant suggests that the MMU actively monitor whether RTO West is complying with its own tariff, that the Commission require that the MMU have a separate budget that is incorporated into the RTO West Tariff, and that all stakeholders have an opportunity to provide input in the MMU selection process.

198. Northwest Council argues that constraints placed on the release of confidential data by the MMU are overly restrictive, especially with regard to sending information to the Commission and others with direct regulatory responsibility.

199. Nucor objects to the limited authority of the RTO West MMU and asks that the Commission require the Applicants to enter into an agreement with an independent third party to perform the market monitoring function. Nucor argues that the limitation that the MMU will only have access to information collected by RTO West in its regular course of business is unreasonable, and asserts that the MMU should be able to compel further production of information. Nucor further states that market monitoring plan unduly restricts the MMU's ability to investigate complaints, transmit advisory opinions to the Commission or third-party arbitrators, and report on issues of non-compliance by the RTO with its Tariff.

200. The Washington Commission states that, if RTO West is to monitor electricity markets broadly, it may need far more information than it will acquire during its normal course of business. At a minimum, the Washington Commission believes the MMU would need information on commercial transactions (e.g., bilateral transactions) and system conditions (e.g., power plant operations and schedules). Therefore, the Washington Commission believes that either RTO West needs to be equipped with the

authority to collect this information, or the RTO West MMU's scope should be limited to the markets and functions under the control of RTO West.

201. EPSA asserts that the West-wide market monitor, as contemplated by the Steering Group and the WMIC, should in place at the outset of RTO operations. EPSA argues that this is consistent with the Commission's Standard Market Design efforts, which favor the participation of all three Western RTOs in a single regional market monitoring plan with a definitive developmental timeline.

3. Commission Determination

202. We accept, subject to certain modifications discussed below, Applicants' proposal for an RTO West MMU as a reasonable interim measure that complies with Order No. 2000 requirements, and encourage continued efforts to develop a MME for the Western Interconnection.

203. The Commission believes that the MMU will be an essential enforcement tool in fostering competitive RTO markets. In our Standard Market Design NOPR, the Commission stated that effective market monitoring and market power mitigation are critical elements of the Commission's plan to create and maintain competitive regional bulk power markets.⁹⁷ the MMU's effectiveness depends greatly upon its ability to acquire the necessary information provided by market participants. In addition to data obtained from various public sources and in the normal course of operating markets, it may be necessary for the MMU to request certain other information in order to fully evaluate the competitiveness of markets.⁹⁸ The Standard Market Design final rule may provide guidance regarding the analytical techniques to be used by the MMU, including a list of the types of data to be collected. Market monitors must have the ability to request information that will allow them to perform their responsibilities within the scope of their authority. We will require Applicants to propose in a section 205 filing for prospective implementation the information that they believe should be collected. Such information collection must also recognize any need for confidentiality. Market participant objections to MMU information requests will be resolved by the Commission on an expedited basis, as delays in providing information could result in continuing harm to the market. In any

⁹⁷Standard Market Design NOPR, at P 392. We address market power mitigation measures later in this order.

⁹⁸For example, information on the operating status of transmission and generation facilities where there are claimed outages or de-ratings may be required to analyze allegations of generation withholding.

such dispute, the Commission will give deference to the MMU's stated need for the information.

204. Order No. 2000 provides RTOs with flexibility in designing market monitoring plans. Because not all market operations in a region may be operated or administered by the RTO, the Commission stated that the monitoring plan must periodically assess whether behavior in other markets in the RTO's region affects RTO operations. Applicants have indicated that bilateral markets in the Northwest will continue to be significant in the RTO West region, and commit the MMU to monitoring the effects of bilateral markets on RTO West operations. In response to the Washington Commission's concern that the MMU may need to revise its procedures relating to data collection to accommodate the review of commercial transactions (e.g., bilateral transactions), we note that while Order No. 2000 did not require the collection of data beyond the RTO's ordinary course of business, if the proposed procedures for data collection inhibit the MMU's ability to analyze markets pursuant to its authority, we will expect the MMU to assess its needs and for RTO West to propose new procedures accordingly in a section 205 filing for prospective application and Commission approval.

205. We disagree with intervenors' assertion that, prior to notifying the Commission, the MMU should alert the RTO West Board, staff and stakeholders regarding market anomalies to allow the Board to address market problems in-house in the first instance. In New Power Company v. PJM Interconnection, Inc.,⁹⁹ the Commission required the market monitoring plan to be modified to require immediate disclosure to the Commission when the MMU identifies a significant market problem that may require: (1) further investigation; (2) a change in the RTO's tariff or market rules; or (3) action by the Commission and/or one or more state commissions.¹⁰⁰ Because Applicant's proposal deviates from the requirements of that order, we direct Applicants to revise their Market Monitoring Plan to include a requirement to report directly to the Commission.¹⁰¹

⁹⁹98 FERC ¶ 61,208 (2002). This proceeding revealed a gap in the Commission's ability to regulate PJM's and other markets because PJM's market monitoring plan allowed, but did not require, its market monitor to communicate market problems to the Commission on a timely basis.

¹⁰⁰Id. at 61,759-60.

¹⁰¹Under Applicants' current plan, when market performance is found to be inconsistent with a competitive market, the MMU will first coordinate its studies with appropriate RTO Staff before it notifies both the Commission and the RTO West Board (continued...)

206. With respect to monitoring compliance with the RTO West tariff, we believe that the MMU's commitment to responding to requests from entities, including complaints alleging RTO West's failure to properly enforce its tariff, is sufficient to ensure that the administration of the RTO West tariff is not unduly discriminatory or preferential or provides opportunity for the exercise of market power.

207. In Order No. 2000, the Commission did not prescribe a particular market monitoring plan, or the specific elements of such a plan, because market monitoring is evolving as trading markets are created. The Commission provided for a flexible approach and noted that different market monitoring plans may be appropriate for different RTOs.¹⁰² In addition, the Commission stated that it would periodically assess the need for, and the degree of market monitoring that should be done.¹⁰³ The Standard Market Design NOPR relies heavily on a market monitor that is autonomous from the independent transmission provider to perform a number of specified tasks.¹⁰⁴ The Commission also indicated that the essential elements of a market monitoring plan would be explored further at technical conference with opportunity for public comments.¹⁰⁵ Therefore, we accept Applicants' market monitoring plan with the understanding that the Commission will periodically assess the need for, and degree of market monitoring for RTO West and will consider issuing a supplemental order regarding RTO West's market monitoring plan after the conclusion of the market monitoring technical conference, which is scheduled for October 2, 2002.¹⁰⁶

208. Finally, we find that the market monitoring plan fails to include the reporting requirements of Order No. 2000, *e.g.*, how information will be reported and the types and frequency of reports. We direct the Applicants to revise their plan to include the modifications discussed above, including specific reporting policies and procedures.

¹⁰¹(...continued)
regarding the inconsistent market performance and the need for further study.

¹⁰²Order No. 2000 at 31,155-56.

¹⁰³Id. at 31,380.

¹⁰⁴Standard Market Design NOPR, at PP 429-454.

¹⁰⁵Id., at P 435.

¹⁰⁶See Notice Revising Public Comment Schedule and Announcing Technical Conferences, Docket No. RM01-12-000, issued September 10, 2002.

Such reporting requirements should be consistent with the requirements identified by our technical conference deliberations.

RTO Function No. 7: Planning and Expansion

The RTO must be responsible for planning and for directing or arranging necessary transmission expansions, additions and upgrades that will enable it to provide efficient, reliable, and non-discriminatory transmission service and coordinate such efforts with the appropriate state authorities.

209. Our April 26 Order considered a request by TransConnect that it be permitted to share the planning and expansion function with RTO West. We stated that Section 12.2 of the TOA (which stated that RTO West would have primary responsibility and final decision making authority for planning and expansion) was consistent with Order No. 2000. The Order further stated that responsibility for planning and expansion could be shared so long as the plan is sufficiently detailed and provides clarity about the decisional process. The Order directed parties to further explain in their Stage 2 filings how they would share the transmission planning and expansion responsibilities and how non-wires solutions would be considered in the decisionmaking process.

1. Applicants' Proposal

210. The TOA and RTO West Planning and Expansion Protocol establish that RTO West will have ultimate authority for planning for RTO West-controlled transmission facilities. RTO West will implement a proactive, inclusive, least-cost public planning process and will encourage market-based expansion decisions. It will provide a forum for an open subscription process to facilitate construction of market-sponsored projects to relieve congestion. In addition, RTO West will have backstop authority to require expansion in four situations in which a PTO has not satisfied its obligations under the TOA. RTO West will have the authority to ensure compliance with Transmission Adequacy Standards;¹⁰⁷ should a PTO fail to provide sufficient congestion management assets, to expand the system to ensure sufficiency; to implement whatever cost-effective transmission solutions it determines are appropriate to mitigate congestion. If the RTO West Board, in consultation with the MMU, demonstrates that specific instances of market failure have precluded cost-effective mitigation of chronic, significant congestion,

¹⁰⁷Transmission adequacy is the physical ability of the RTO West-controlled transmission facilities, irrespective of the cost of energy, to serve load. PTOs have the primary responsibility for complying with RTO West's transmission adequacy standards.

RTO West will have the authority to implement whatever cost-effective transmission solutions it determines are appropriate to mitigate the congestion.¹⁰⁸

211. The TOA provides that RTO West may share its planning and expansion responsibility with PTOs, even those that are not independent from market participants. RTO West has the right to review all proposals for additions, modifications or expansions to facilities under its control. Its approval of additions, modifications or expansions shall not be unreasonably delayed or withheld. Under the TOA, a PTO may upgrade or expand the RTO West-controlled transmission facilities so long as RTO West determines that: (1) project sponsors have appropriately mitigated negative effects on system transfer capability or reliability; (2) project sponsors offered interested parties an opportunity to participate in their planning process and allowed such parties an opportunity to modify the proposed project in a manner that would increase its transfer capability or reliability benefits subject to the interested parties assuming responsibility for the increased costs resulting from the modification; and (3) the proposed additions or modifications satisfy applicable interconnection and integration requirements.

212. Each PTO is required to support those facility upgrades or expansions directed by RTO West on facilities under the PTO's operational control.¹⁰⁹ If the PTO fails to comply, RTO West may exercise all remedies available, including filing a request with the Commission for an order requiring the PTO to comply.

213. In addition, a PTO may participate in an upgrade or expansion proposed to RTO West by a third party that creates added capacity. The PTO has the right to receive a portion of the transmission rights resulting from such upgrade or expansion in exchange for appropriate cost-sharing responsibility. If the third party sponsor and the PTO cannot agree upon the allocation of the transmission use rights within 60 days, RTO West shall make its own determination, which is subject to the RTO West Arbitration Process.

2. Comments

¹⁰⁸Demonstration of such market failure shall be based on substantial evidence on the record in a public process.

¹⁰⁹This includes, among other things, permitting the installation of such expansions and upgrades, cooperating with RTO West in obtaining siting and other permits, use of rights-of-way, planning and construction of the upgrades or expansions by a third party designated by RTO West, and exercising eminent domain authority.

214. Many intervenors request modifications or rejection of the planning and expansion proposal, arguing that the proposal does not meet Order No. 2000 requirements, does not adequately consider non-transmission alternatives or least-cost options, and does not afford RTO West adequate authority.

215. Duke asserts that under the proposal, RTO West will not have complete planning and expansion authority. The fact that owners of non-RTO West-controlled facilities may use different planning criteria than RTO West, "so long as application of the lower standard will not adversely impact the reliability of the RTO West Controlled Transmission Facilities,"¹¹⁰ can result in transmission expansion biases favoring one type of solution i.e., wires versus non-wires, contrary to the Commission's April 26 Order.

216. The Oregon Commission states that the RTO backstop expansion authority should include the ability to implement least-cost alternatives to remedy all the circumstances described in Applicants' proposal. The Oregon Commission requests that the Commission direct Applicants to work with state commissions to develop a proposal for an interstate panel with significant state regulatory participation to review RTO West backstop and allocation proposals prior to review by the Commission.

217. Eugene Water, Public Interest Organizations and Montana Consumer Counsel state that Applicants must clarify the least cost planning process. Eugene Water states that the process must include conservation and optimal siting. Public Interest Organizations argue that least cost solutions should consider environmental costs. Duke states that the Commission should require Applicants to implement a planning and expansion process that treats all solutions equally, with priority for least cost solutions. UAMPS argues that because a PTO cannot neutrally select among competing expansion proposals, it is inappropriate for the PTOs to use their own least cost planning process rather than using the RTO West process.¹¹¹

218. According to NW Energy Coalition, although RTO West could cause upgrades or expansion under certain scenarios, the TOA prohibits RTO West from implementing non-wires solutions, even when the RTO's own planning process determines that such solutions would be the least costly alternative. Although the RTO Board may implement

¹¹⁰See Stage 2 Filing, Attachment I at 7.

¹¹¹UAMPS assert that Section 15.2.2 of the TOA allows the PTO to choose between developing a least-cost process for evaluating expansion proposals or using the RTO West least-cost planning process.

non-wires solutions, the TOA does not allow such costs to be put into the PTOs' transmission rates.

219. Truckee and Montana Consumer Counsel note that the sharing of the planning and expansion function between RTO West and TransConnect is not well-defined. They state that the Commission should require Applicants to submit revised filings that reflect further discussion in light of the TRANSLink and Alliance orders.¹¹² Public Interest Organizations argue that it is inappropriate for TransConnect, as a for-profit transmission entity, to share the planning and expansion function with RTO West.

220. NW Energy Coalition states that the RTO West proposal provides that RTO West will determine and enforce only transmission adequacy standards. NW Energy Coalition argues that RTO West cannot determine whether a system meets defined transmission adequacy standards without addressing the adequacy of generation. The TOA's definition of Transmission Adequacy Standards limits RTO West's backstop authority to wires solutions and oversteps into traditional authority of load-serving entities and their regulators. The responsibility for ensuring adequacy should remain with each load-serving entity rather than being given to RTO West.

221. Northwest Requirements argues that the transmission adequacy standards for RTO West must be developed in collaboration with wholesale transmission customers before RTO implementation to ensure that the RTO West planning and expansion mechanism will operate as expected.

222. In their answer, Applicants state that their planning and expansion authority is adequate to meet the requirements of Order No. 2000 and, therefore, should be approved. Applicants recognize that they will have to provide additional details before RTO West becomes operational,¹¹³ but they contend that the absence of those details is not fatal to their declaratory order request.

223. Applicants argue that RTO West's authority concerning non-wires solutions meets the requirements of Order No. 2000. RTO West must take into consideration, encourage, and evaluate non-wires proposals brought forward by participants in the RTO West planning process. In addition, RTO West may implement non-wires solutions when a

¹¹²See TRANSLink Transmission Co., L.L.C., et al., 99 FERC ¶ 61,106 (2002) (TRANSLink); Alliance Cos., et al., 99 FERC ¶ 61,105 (2002) (Alliance).

¹¹³For example, Applicants need to propose how costs will be allocated when RTO West exercises its planning and expansion "backstop" authority.

PTO has not taken necessary action to resolve a transmission adequacy problem.¹¹⁴ In addition, Applicants assert that: (1) the Commission has previously addressed this issue in other proceedings in a manner that supports the RTO West proposal;¹¹⁵ (2) the proposal avoids the need to extend RTO's scope of operations beyond providing transmission service into assuming positions or interests in generation markets; (3) it is inappropriate to compel RTO West to adopt planning and expansion policies that would subsidize generation-building by third parties; and (4) the proposal appropriately builds on the structural and institutional foundations already in place.

224. Applicants state in response to the Oregon Commission's request for a role for state commissions that they are willing to discuss with the states whether it is appropriate for state regulators (and other entities with regulatory responsibility for electric services) to play a more specific role in RTO West planning and expansion process and decisions, especially when RTO West invokes its backstop authority. Applicants state that this dialogue may take place through the Steering Group.¹¹⁶

3. Commission Determination

225. With the modifications discussed below, we find that the RTO West transmission planning and expansion provisions meet the requirements of Order No. 2000.

226. Some intervenors assert that the sharing of the planning and expansion function between RTO West and TransConnect is not well-defined or that it is inappropriate for

¹¹⁴RTO West will consider non-transmission solutions in exercising its authority to ensure compliance with Transmission Adequacy Standards. Although there are limitations on its ability to implement non-transmission solutions (for example, RTO West cannot build or purchase the output of a new generating facility), RTO West may accept a non-transmission solution proposed by a third party so long as (1) it is proven to meet the applicable reliability criteria and (2) the Commission will allow its costs as a transmission cost for the benefitting party or parties. See Stage 2 Filing, Appendix I at 9.

¹¹⁵See Midwest Independent System Operator, Inc., 97 FERC ¶ 61,326 (2001), (Midwest ISO). Under the planning and expansion provisions of the Midwest ISO's agreement with its transmission owners, the Midwest ISO has the authority to carry out and allocate costs of only necessary transmission projects.

¹¹⁶Applicants also encourage the Commission to participate in such discussions to ensure that allocation of costs has sufficient support before RTO West exercises its authority to allocate costs.

TransConnect to share this function. Our April 26 Order concluded that, under the original TOA,¹¹⁷ RTO West would have primary responsibility and final decisionmaking authority for transmission planning and expansion of transmission facilities under the operational control of RTO West. This language, which we previously relied upon,¹¹⁸ has been modified in the Stage 2 proposal. Section 15.1 of the revised TOA states:

RTO West shall have ultimate authority for long-range planning for the RTO West Controlled Transmission Facilities. . . Consistent with any FERC requirements, RTO West may share its planning responsibility with the Executing Transmission Owner as appropriate, and, if FERC has determined that the Executing Transmission Owner is independent from control market participants, RTO West shall share its planning responsibilities with the Executing Transmission Owner.

Sections 15.2 and 15.2.3 state:

RTO West shall have the right to review all proposals for additions, modifications or expansions to RTO West Controlled Transmission Facilities . . . [this approval] shall not be unreasonably delayed or withheld.

227. We are concerned that the authority of RTO West may have been diminished unacceptably by the revised TOA language. Although RTO West continues to have ultimate authority over planning of transmission facilities under its control, it now has the right to review, but may not possess the final decisionmaking authority over expansion proposals. Applicants are directed to revise the TOA and planning and expansion

¹¹⁷Section 12.1.2 of the original TOA stated, in part:

RTO West shall retain primary planning responsibility and final decision-making authority with respect to RTO West Controlled Transmission Facilities; provided that if the additions, modifications and expansions to such facilities do not impair reliability or [the Total Transfer Capability] of the RTO West [Controlled] Transmission System, the requested approval of RTO West shall not be unreasonably delayed or withheld.

¹¹⁸See 95 FERC at 61,339 n.61.

proposal to clarify that RTO West has "ultimate responsibility for both transmission planning and expansion within its region," consistent with Order No. 2000.¹¹⁹

228. In Midwest ISO,¹²⁰ we emphasized that the planning process must focus on identifying projects that expand trading opportunities, better integrate the grid, and alleviate congestion that may enhance generator market power. In addition, we found that third party participation of construction and ownership is important even though obstacles may prevent third parties from competing effectively with incumbent transmission owners in the short run.¹²¹

229. We conclude that with the clarification required above, the planning and expansion proposal adequately addresses these objectives and considers least cost options and non-wires solutions. RTO West will encourage market-driven expansion by market sponsors to improve the transmission system through an open solicitation and will consider alternate solutions to transmission as part of an overall least-cost planning process. In addition, non-PTO project sponsors may offer detailed project proposals to RTO West to include in its expansion plan, so long as they comply with RTO West planning guidelines and applicable reliability criteria.

230. The planning and expansion proposal allows a PTO to apply a different standard to its non-RTO West-controlled facilities as long as application of that standard will not undermine the reliability of RTO West-controlled transmission facilities. This is consistent with our orders in TRANSLink¹²² and Alliance,¹²³ and we will therefore approve it. However, it is unclear what planning authority RTO West will have over facilities defined as Certain Distribution Facilities. These are described as dual-function facilities which support wholesale services. According to the application, RTO West will have planning and expansion authority over these facilities for transmission adequacy and congestion management purposes. However, the planning and expansion proposal provides that the PTO "has planning authority for its non-RTO West Controlled

¹¹⁹Order No. 2000 at 31,164.

¹²⁰97 FERC at 62,520.

¹²¹Id., citing PJM Interconnection, L.L.C., 96 FERC ¶ 61,061 (2001) (PJM).

¹²²99 FERC at 61,472.

¹²³99 FERC at 61,439-40.

Transmission Facilities, including those needed to serve wholesale transactions."¹²⁴ We direct Applicants to clarify that RTO West has planning authority over all facilities necessary to provide wholesale transmission service.

231. UAMPS argues that it is inappropriate for PTOs to use their own least-cost planning processes rather than using the RTO West process. We disagree. Under the planning and expansion proposal, if a PTO determines that its system will need to be upgraded or expanded to fulfill transmission adequacy standards, the PTO may sponsor a plan to meet the standards through a process that evaluates both transmission and non-transmission solutions. However, if the PTO uses its own plan, RTO West must confirm that the PTO's process identified and evaluated non-transmission alternatives before approving the plan. Otherwise, the PTO may propose its plan to RTO West, which will evaluate it in RTO West's least-cost planning process, or the PTO may request that RTO West develop a plan on behalf of the PTO through RTO West's least-cost planning process.

232. We disagree with NW Energy Coalition that the TOA does not allow the cost of non-wires solutions to be put into the PTO's transmission rates. According to the application, RTO West would seek Commission approval to allow costs associated with a non-wires solution to be recovered from the benefitting party or parties.

233. The planning and expansion proposal states that RTO West will work with the Commission, other regulatory agencies, states and tribes to determine how they will participate in the RTO West planning process. In response to the Oregon Commission's request, Applicants state that they will explore whether it is appropriate for state regulators (and other entities with regulatory responsibility for electric services) to play a more specific role, especially when RTO West invokes its backstop authority. We direct Applicants to discuss with regulators their participation in the planning and expansion process through the Steering Group. Applicants are further directed to include regulatory participation in their pending issues list to be filed with the Commission, as discussed in the following section.

234. Standard Market Design proposes planning across an entire region.¹²⁵ The Commission noted in the Standard Market Design NOPR that because the Committee on Regional Electric Power Cooperation (CREPC) in the West provides for state and provincial advice on regional planning across the entire Western grid, regional planning

¹²⁴ Stage 2 Filing, Att. I, (Planning and Expansion Proposal) Section A.

¹²⁵ Standard Market Design NOPR, at PP 335-350.

should be performed for the entire WECC.¹²⁶ Consequently, we encourage RTO West to continue Steering Group discussions and to participate fully in other working group forums to develop an appropriate planning process for the entire Western Interconnection.

RTO Function No. 8: Interregional Coordination

The RTO must ensure the integration of reliability practices within an interconnection and market interfaces among regions.

235. Our April 26 Order recognized the efforts by many entities in the West to address seams and inter-regional coordination issues. The Order directed Applicants to file a status report, no later than December 1, 2001, detailing how they will resolve seams issues. The December 1, 2001 filing provided an overview of the Western RTO Seams Resolution Process and the Western Market Vision, a timeline for achieving a seamless west-wide market, and a summary of current work group activities.

1. Applicants' Proposal

a. Coordination between RTOs

236. In response to the April 26 Order, Applicants, through participation in the Steering Group, set out the Western Market Vision as a guiding document for future seams resolution work.¹²⁷ According to Applicants, the Steering Group is the appropriate model

¹²⁶Id., at P 341.

¹²⁷Principles of the Western Market Vision include: shared services, including back-up control centers, employee training, purchasing, settlements, software and IT systems; one-stop shopping, including OASIS, ancillary services, scheduling; market monitoring, interregional planning, and interregional dispute resolution; standards and practices, including common transmission products, interconnection standards, reliability standards, alternate dispute resolution, protocols and data standards, scheduling practices, pricing and liability protection; and regional accountability, including control area operation, security coordinator, maintenance, outage coordination, capital expenditures, regional planning and regulatory compliance. See Exh. A to Status Report filed by PGE, (continued...)

for future development and operation of an efficient seamless western market. The Steering Group consists of representatives of RTO West, the California ISO and WestConnect . The Steering Group will use a consensus-building process¹²⁸ to resolve issues. The representatives will present issues affecting the operation of the seamless market to the Steering Group, which will discuss the issues, identify priorities and outline schedules for resolution. The Steering Group will then refer its consensus recommendations to the respective organizations for consideration and approval. Applicants state that the Steering Group can also provide for meaningful participation by state and provincial representatives.

237. In the first phase of the Steering Group's work, a Memorandum of Understanding and Cooperation will define the commitment by the three Western Organizations to support and rely on the Steering Group as the forum in which to develop consensus positions. The Steering Group has formed four work groups: the Planning Work Group, the Market Monitoring Work Group, the Price Reciprocity Work Group and the Common System Interface Coordination Work Group. Work groups formed by the Steering Group are open to participation by all interested stakeholders. Specific functions of the Steering Group are to:

- Coordinate and manage a West-wide transmission expansion planning function for the bulk western transmission system;
- Develop and support a single market monitoring entity for the West;
- Support implementation of common and compatible systems and services;
- Coordinate the development of market interface and electric business practice standards for the Western Interconnection;
- Coordinate implementation of common or compatible market design models;
- Facilitate discussions among the three RTOs regarding sharing systems, procuring compatible hardware and software, and creating mutually beneficial service functions;

¹²⁷(...continued)

Nevada Power and Sierra Pacific on December 1, 2001.

¹²⁸Applicants describe this as a Conference Committee approach.

- Cooperatively develop consensus positions on interregional RTO issues; and
- Ensure that the Steering Group work is coordinated with and supports state and provincial policies.

238. Applicants assert that the Steering Group should be the forum for resolving interregional, commercial and marketing issues in the West and that the WECC should be the forum for dealing with reliability issues in the West. However, because of the close relationship between reliability and market interface business practices, Applicants state that a strong coordinating relationship should exist between the Steering Group and the WECC.

b. Coordination with other Western Entities

239. The Steering Group will work with the WMIC and will integrate its activities with those of the WMIC and the WMIC Seams Subcommittee. The Steering Group has assisted WMIC in development of core elements for a seamless market and has explored methods of coordinating outages on transmission facilities for maintenance on a multi-system basis. In addition, with Steering Group support, WMIC has prepared a preliminary report on coordinated phase shifter operation.

240. The Common System Interface Coordination Work Group, which was created by the Steering Group, is developing a common OASIS, evaluating shared backup control centers, developing common communications and data-sharing protocols, and coordinating hardware and software systems. The Steering Group has also sponsored a West-wide workshop to develop a proposal for a common market monitoring unit for RTO West, WestConnect and the California ISO.

241. Applicants request that the Commission (1) find that the current and proposed activities and practices related to interregional coordination for RTO West satisfy the interregional coordination function of an RTO and (2) approve the Western Market Vision and the Steering Group model as the mechanism to implement the Western Market Vision.

2. Comments

242. Western supports the consensus-building forum of the Steering Group and encourages this group to further coordinate with the WMIC and the WECC on interregional coordination. Williams states that RTO West should provide the

mechanisms for inter-regional coordination and seams issue solutions within the Western Interconnection. EPSA states that due to the regional nature of the Western Interconnection market, it is imperative that RTOs within that region take similar approaches to RTO development and address seams issues at the outset.

243. PG&E states that three different RTO models are evolving in the Western Interconnection without a clear understanding of how seams issues will be addressed. It further contends that recent experience strongly suggests that a voluntary approach to resolving seams issues will not work. To ensure adequate coordination and consistency, PG&E urges the Commission to order an expedited process to resolve all seams issues, whether through a facilitated consensus-building process or mediation/settlement and, failing resolution in that way, a Commission order directing a result.

244. UAMPS and Independent Energy Producers argue that Applicants should open the Steering Group to a public stakeholder process and seek meaningful participation from all stakeholders. Independent Energy Producers urge the Commission to require that all substantive proposals for resolution of seams issues by the Steering Group be presented to the WMIC Subcommittee for review and comment.

3. Commission Determination

245. Order No. 2000 requires the RTO to develop mechanisms to coordinate its activities with other regions whether or not an RTO exists in these other regions. In addition, the RTO applicant must propose reporting requirements, including a schedule for itself to provide follow-up details as to how it is meeting the coordination requirements of this function. Order No. 2000 explains that RTOs are not required to have a uniform practice, but that RTO reliability and market interface practices must be compatible with each other, especially at the seams. RTOs must coordinate their practices with neighboring regions to ensure that market activity is not limited because of different regional practices.

246. We are encouraged by the parties' efforts to address seams issues by creating the Western Market Vision and assigning functions to the Steering Group to implement the Western Market Vision and its coordinated efforts with WMIC. We approve Applicants' proposal for the consensus-building forum of the Steering Group and direct Applicants to work with WestConnect and California ISO to formalize the Steering Group as the seams resolution group for the RTOs in the Western Interconnection. We direct Applicants,

within 90 days of the issuance of this order, to: (1) codify the Memorandum of Understanding and Cooperation between the parties to expressly define their commitments and the forum by which issues will be resolved; and (2) provide a list of pending issues before the Steering Group and a timeline for resolution of those issues.

247. Because the Steering Group has indicated its intention to expand its membership to permit other stakeholders to participate in the process, intervenors' request on this issue is moot. Interested stakeholders may participate in work groups established by the Steering Group and may voice their concerns to the Commission through intervention in formal proceedings. We encourage the Steering Group to continue working closely with WMIC on seams issues.

Agreement Limiting Liability Among RTO West Participants

248. The April 26 Order rejected Applicants' original proposal to include an agreement to limit liability in the TOA. We found that the Commission decided in Order No. 888¹²⁹ that the pro forma tariff deliberately does not address liability issues. Rather, the Commission decided in Order No. 888 that transmission providers may rely on state laws, where applicable, to protect utilities or others from claims founded in ordinary negligence. The April 26 Order also noted that the Commission has consistently rejected liability limitation provisions in tariffs involving open access transmission service.¹³⁰ On rehearing, the July 12 Order accepted Applicants' proposal to the extent that it allocates risk among the transmission owners and the RTO, but again rejected Applicants' proposal to the extent it limits the rights of transmission customers and other third parties.¹³¹

1. Applicants' Proposal

¹²⁹See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. New York v. FERC, 122 S.Ct. 1012 (2002).

¹³⁰95 FERC at 61,346-47.

¹³¹96 FERC at 61,181-82.

249. In the Stage 2 filing, Applicants state that they have now limited the scope of liability provisions so that those provisions apply only to RTO West and each transmission owner that signs a TOA.¹³² Those provisions have been incorporated into Section 19 of the TOA (Attachment A to Applicants' Stage 2 filing).

250. However, Applicants maintain that restricting liability provisions to the relationship between RTO West and PTOs could result in different rights and responsibilities for transmission owners versus those for generation or distribution entities. For this reason, Applicants state that they intend to work on a voluntary, multilateral liability agreement so that any generation or distribution entity may voluntarily enter into the liability agreement with RTO West and any PTOs that choose to become parties to the agreement. They further contend that Section 19 of the TOA requires RTO West to maintain a substantial amount of liability insurance and to include each PTO as an additional named insured on its insurance policy. Applicants do not yet know the cost and availability of the insurance they will be required to have, but they state that a number of Applicants are concerned that, if the provisions to limit liability for wholesale and retail outage claims are not resolved through Commission proceedings or otherwise, there could be broad or unevenly shared liability risk that could preclude their participation in RTO West.¹³³

2. Comments

251. Alberta expresses concern about the deletion of consequential and third party liability proposals and the uncertainty as to whether there will be adequate insurance. It

¹³²For example, Section 19.6 of the TOA (Contribution Related to Liability), provides in part that the executing transmission owners shall not be liable for damages from any disruption, interruption, suspension, curtailment or fluctuation of service to be provided by RTO West's operation, maintenance or use of any RTO West Controlled Transmission Facilities or certain distribution facilities.

¹³³Applicants maintain that, because of the potential unavailability of liability insurance for service outages and the complexity of exercising termination rights under the TOA (due in large part to the congestion management model proposed for RTO West), Avista and others may not be able to proceed with RTO West absent tariff or legislative limitations on RTO West's liability. They contend that the extent of RTO West's exposure to liability judgments significantly increases because the protections available to Bonneville under the Federal Tort Claims Act will likely be unavailable to RTO West, and this increased tort liability exposure threatens the ability of RTO West to provide net benefits to the region.

further states that, in Alberta, the legal regime that governs liability includes: legislation (the Liability Protection Regulation); terms and conditions of service set by the Alberta Energy and Utilities Board; power purchase arrangements; contracts; and the common law. In Alberta, the extent to which regulated entities, including the Power Pool of Alberta and the Transmission Administrator, are protected from any liability that they might ordinarily face as potential defendants under the common law of negligence is governed by regulations enacted under a statute. Alberta states that currently, the Transmission Administrator and the Power Pool are liable for losses resulting from negligence, bad faith or willful misconduct, limited to direct damages only (no indirect or consequential damages). Also, liability for third party damages is effectively limited by the statute limiting recovery to direct damages. Alberta argues that, given the absence of specific federal legislation applicable to RTO West, an effective approach to ensuring clarity and consistency would be the promulgation of regulations by the Commission generally applicable to and within all RTOs, or the adoption of RTO-specific tariff terms and conditions.

252. Mirant argues that the proposed liability provisions are inconsistent with the pro forma tariff and severely limit the rights of third parties. It contends that simply restricting the liability provisions to the relationship between RTO West and the PTOs does not address this concern.

253. Public Power Council argues that: (1) Applicants stand to benefit from the proposed liability provisions in the TOA; (2) liability provisions should be removed from the TOA until an independent Board is seated that will consult with all stakeholders to allocate the liability among the parties to the TOA; (3) the TOA liability provisions do not contain equal obligations to maintain the transmission system and unbalance the allocation of risks of liabilities among the parties, because the TOA requires RTO West to perform without imposing a parallel obligation on the PTO to comply with the same standards; and (4) section 19.6 of the TOA is an attempt to limit the liability of the PTOs and shift the costs of the liability to other users of the transmission system.

3. Commission Determination

254. In Midwest Independent Transmission System Operator, Inc.,¹³⁴ the Commission addressed revisions to the Midwest ISO OATT that would limit the liability of Midwest ISO and the Midwest ISO transmission owners for certain damages related to services provided under the Midwest ISO OATT. The Commission recognized that:

¹³⁴100 FERC ¶ 61,144 (2002) (Midwest ISO).

[I]n the wake of Order No. 888, restructuring changes have occurred within the electric industry and that limited liability provisions may be appropriate for inclusion in Commission tariffs under certain circumstances, e.g., where there is no liability protection under state law. The Commission is considering this matter in its generic rulemaking proceeding regarding open access transmission service and standard market design (SMD proceeding). In this regard, any comments received in the SMD proceeding will aid the Commission in determining how best to resolve this issue for transmission providers such as the Midwest ISO.^[135]

255. Further, the Commission will convene a technical conference on December 11, 2002, regarding limited liability provisions that will afford an opportunity for interested parties and Staff to explore in an industry-wide context issues regarding limited liability provisions in OATTs. Following the conference, the parties will have an opportunity to file written comments, which will help form the basis for further Commission action on this issue.¹³⁶

256. The Commission conditionally accepted Midwest ISO's proposed limited liability provisions for filing and suspended them, to become effective subject to refund and subject to further orders. The Commission also directed Midwest ISO to remove proposed caps on ordinary negligence from the proposed limited liability provisions, because Midwest ISO had not adequately supported them.¹³⁷

257. Applicants have removed the provisions that limited the rights of transmission customers and other third parties from the proposed liability provisions, as required by the April 26 and July 12 Orders. However, under Midwest ISO, discussed above, we determine that Applicants may propose liability provisions when they file the RTO West tariff. This determination is subject to the outcome of the Standard Market Design NOPR.

Cost-Benefit Study

¹³⁵Id.

¹³⁶Id. at P 25.

¹³⁷Id. at P 26.

1. Applicants' Proposal

258. Applicants contracted with Tabors Caramanis & Associates to analyze the probable benefits and costs of RTO West. The goal of the analysis (the Tabors cost-benefit study) was to provide all stakeholders an independent analysis of the merits of establishing RTO West, and its related influences on the commercial, wholesale markets.¹³⁸ The study made several findings: (1) system benefits from direct savings in operating costs and system benefits that would result from reduced transmission system congestion; (2) estimates of several other qualitative benefits;¹³⁹ (3) estimates of quantified costs to forming an RTO as well as unquantified, qualitative costs, e.g., generalization costs – the potential loss of unique expertise currently supported by operating smaller, individual transmission systems and complexity costs – additional costs of externalities, beyond the Schedule Coordination role, required to support the RTO structure; and (4) all electricity markets in the RTO West region are highly concentrated, suggesting the potential for – but not necessarily the existence of – the exercise of market power, and the degree of market concentration is not materially affected by the implementation of RTO West. Assessing overall impacts, the Tabors cost-benefit study concludes that the quantitative and qualitative (but unquantifiable) benefits of RTO West could outweigh the economic and social costs.

259. Applicants did not include the Tabors cost-benefit study in their Stage 2 filing. In their Answer, they explain that they did not include it in the Stage 2 filing because a showing of net benefits is not a necessary element of a request for a declaratory order for compliance with Order No. 2000. However, Public Generating Pool attached the Tabors cost-benefit study to its protest.

¹³⁸The Tabors cost-benefit study analyzed four principal areas: (1) an energy impact analysis (a simulation analysis) of the engineering economics of operation of the RTO West region and the Western System Coordination Council with and without the existence of RTO West; (2) analyses to estimate the costs of operating an RTO, operating a secondary exchange, market participants' acting as a Schedule Coordinator, and of impacts of lost load due to unplanned outages or impacts of reductions in unplanned outages; (3) potential impacts of implementing an RTO (with respect to RTO focus, coordination, and information exchange; RTO consolidation of functionality; organizational relationships established by the RTO; and RTO independence); and (4) an analysis of market concentration in the northwest with and without RTO West.

¹³⁹E.g., planned outage management, improved communication and coordination leading to fewer failures, better voltage/frequency management, better management of loop flow.

2. Comments

260. Several parties raise the cost-benefit issue. States also emphasize the importance of the issue to them. Public Generating Pool asserts that: (1) the RTO West Stage 2 proposal, if implemented would harm consumers, and (2) the independent cost-benefit analysis commissioned by the Applicants (in consultation with interested stakeholders) is fundamentally flawed.

261. Montana Consumer Counsel states that the Tabor's study demonstrates that the likely effect on Northwest consumers is the imposition of net costs with no offsetting benefits. Washington Commission states that RTO benefits must outweigh the costs or the proposal cannot be just and reasonable or in the public interest. Northwest Requirements Utilities and IDEA state that the cost-benefit analysis of the RTO West proposal demonstrates that there will be only marginal benefits or net costs. Northwest Requirements Utilities argue that corrections to the study indicate that the benefits are overstated. They also argue that the study does not include most of the costs to establish and implement RTO West operation. Aluminum Industrials state that the possibility of incremental state and local taxes on RTO West should be addressed by a cost-benefit analysis. Montana Consumer Counsel states that the Commission should hold Montana consumers harmless upon commencement of service and that Montana consumers should not be subjected to increases in power costs attributable to the establishment of an RTO.

262. Applicants state that at the oral argument for the appeal of Order No. 2000, the Commission indicated to the court that the Commission must address specific cost-benefit evidence that has been presented in the RTO West proceeding before reaching a final decision.¹⁴⁰ Applicants state that they intend to move forward with implementation of the RTO West proposal, but they request that the Commission inform them if it has concerns regarding the prudence of such action.

3. Commission Determination

263. In the April 26 Order, we stated that Order No. 2000 found that the benefits of RTO formation overall outweigh costs, but it did not require individual cost-benefit

¹⁴⁰See Public Utility District. No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607, 619 (D.C. Cir. 2001) (Snohomish).

analyses in compliance filings.¹⁴¹ However, consistent with Snohomish, we will address the cost-benefit issue when we render a final decision.

264. In our Standard Market Design NOPR, we noted that software and data issues have become an important and often expensive part of market design.¹⁴² To ensure that the expense associated with operational data and software is kept to a minimum, the Commission suggested that software design be transparent, modular, and flexible enough to accommodate change. We encourage Applicants to consider the use of a modular software design whenever possible to assist in lowering the implementation cost of RTO West.

Standard Market Design Elements not Addressed by Stage 2 Filing

a. Comments

Lack of a Day-Ahead Energy Market

265. Independent Energy Producers assert that RTO West's proposal diverges substantially from the concepts set forth in the Commission's Working Paper on Standard Market Design.¹⁴³ Independent Energy Producers are concerned that the following issues may create seams issues and stymie a single West-wide RTO: (1) lack of a day-ahead market; (2) requirement for balanced schedules; (3) lack of a structure to ensure generation adequacy; and (4) failure to propose the use of multi-part bids.

266. Mirant argues that lack of a day-ahead energy market is inconsistent with the Commission's Working Paper and a departure from Standard Market Design the Applicants have failed to explain. Mirant argues that the real-time market will play a limited role in RTO West, serving only to make up for minor scheduling deviations, rather than operating as a true, robust market which is at odds with the Working Paper.

267. IPPs/Marketers claim that a day-ahead market administered by RTO West would provide a mechanism for entities without transmission rights to gain access to the transmission grid.

¹⁴¹95 FERC at 61,324.

¹⁴²Standard Market Design NOPR, at PP 351-360.

¹⁴³See Working Paper on Standardized Transmission Service and Wholesale Electric Market Design, Docket No. RM01-12-000 (Mar. 15, 2002) (Working Paper).

268. Applicants disagree that it is necessary for the transmission provider to operate a day-ahead energy market because of the strong existing bilateral market in the Northwest. They argue that operating a day-ahead market could jeopardize liquidity in the bilateral market and that a day-ahead market would be thinly traded because of existing bilateral arrangements.

Balanced Schedule Requirement

269. IPPs/Marketers state that requiring all Scheduling Coordinators to balance their schedules will impede efficiency and jeopardize liquidity. In addition, Montana Consumer Counsel, and Nucor assert that Applicants should be required to justify their need for balanced schedules in light of the Commission's preference for unbalanced schedules.

270. Applicants state that requiring balanced schedules will encourage market participants to seek counter-parties in bilateral markets, rather than relying on the transmission provider to perform a matching function.

Lack of a Resource Adequacy plan and Outage Coordination

271. Mirant asserts that the RTO West proposal fails to address long-term generation adequacy, which is at odds with the Working Paper. Mirant argues that the RTO West region clearly needs additional generation capacity and promoting its development should be a paramount objective of RTO West.

272. Applicants state that they favor coordinating generation outages on a voluntary basis and that RTO West will be a central clearinghouse for information and requiring cooperation when a generator's status affects the transmission system's transfer capability. In addition, Applicants claim that generator outage coordination would be ineffective and inequitable given the large proportion of non-jurisdictional entities in the RTO West region. Applicants also believe RTO involvement in generator maintenance would further complicate and potentially conflict with coordinated operation of hydro-generation already required in the region by contract and treaty.

b. Commission Determination

273. Several intervenors comment that attention must be given to how RTO West's proposal fits within the Standard Market Design Working Paper, and with the California ISO's existing and proposed market design. While Applicants' Stage 2 proposal is a

comprehensive framework in response to the functions and characteristics contained in Order No. 2000, a few elements proposed in our Standard Market Design NOPR address issues not required by Order No. 2000. As we stated at the beginning of this order, we look at the RTO West filing as both informing and being informed by the proposed rule. To this end, we order further technical conferences on certain aspects of the filing in order to fully explore a regional approach that may be taken to address the issues below.

274. We have previously noted that Applicants do not propose to establish a Day-Ahead Market. Such a market provides market participants the opportunity to offer to sell or buy power by submitting voluntary bids, with the outcome financially binding on parties. Applicants' "Day-Ahead" scheduling process reflects many of the elements upon which a Day Ahead market could be established (e.g., voluntary inc and dec bids, the process occurs in the day ahead of operations, the results are financially binding). Applicants believe that the proposed scheduling process (with balanced schedules) without a Day Ahead market will achieve the start up objectives of RTO West based on the current reliance of bilateral trading. As the remaining aspects of RTO West's congestion management system are developed, we encourage the parties to consider whether a Day Ahead market or some modification to its scheduling process can provide additional efficiency to market participants.

275. RTO West has not proposed a resource adequacy plan as part of its Stage 2 proposal. Although Order No. 2000 did not require such a plan to be developed, the ability to ensure adequate capacity is available to serve the market place is a fundamental requirement to robust, competitive markets in the long-term, and a "fundamental pillar of any market design."¹⁴⁴ We encourage Applicants to consider developing an appropriate resource adequacy plan. As part of that development, Applicants should consider the effect of RTO West procedures to implement reliability requirements in the development of a resource adequacy plan.

276. Another important measure to ensuring that market prices reflect competitive outcomes, which was not required by Order No. 2000, is market power mitigation measures. In our Standard Market Design NOPR, we noted the challenge in developing an effective market power mitigation plan is to design a plan that allows markets to function when they are competitive and, where they are not, uses market mechanisms to facilitate the transition to competitive markets, and we suggested several possible measures that could address market problems identified by an independent competitive

¹⁴⁴California Independent System Operator Corp., 100 FERC ¶ 61,060 at P 120 (2002).

market analysis.¹⁴⁵ As noted earlier, Applicants are exploring through their participation in the Steering Group the creation of a West-wide market monitor, and have proposed an RTO West MMU as an interim measure that will, among other things, analyze RTO West markets. As the remaining elements of the RTO West market design are developed by the parties and market rules proposed to implement that design, we encourage Applicants to consider including appropriate market mitigation measures to prevent participants in RTO West markets from exercising market power due to structural flaws in the market (e.g., lack of price-responsive demand, existence of load pockets) or unusual market conditions. These measures can and should be tailored to fit the specific needs and characteristics of the market.

277. While Applicants have provided some rationale for developing (or not developing) particular elements, in many instances the rules, protocols and details necessary to fully understand the proposal and then to evaluate its reasonableness have not yet been developed. The Commission believes the best course is for Applicants to hold additional discussion with stakeholders through the RRG process and for Commission staff to hold technical conferences to better understand the technical requirements, the market design rationale and other relevant information, which will be needed to create the appropriate market mechanisms for providing transmission service in the Northwest, as well as in the Western Interconnection. We also direct the RTO West MMU to assess periodically whether RTO West market operations could be improved by changes in its market design. Because the Steering Group is also considering how RTO West and other transmission organizations in the West can develop common practices and eliminate seams between such organizations, we direct Applicants to file a report within 90 days indicating progress on resolving such issues on a West-wide basis.

The Commission orders:

(A) Applicants' request for a declaratory order is hereby granted in part, as discussed in the body of the order.

(B) Applicants are hereby directed to, within 90 days of the date of this order, (1) codify the Memorandum of Understanding and Cooperation between the parties to expressly define their commitments and the forum by which issues will be resolved and (2) provide the Commission a list of pending issues before the Steering Group and a timeline for resolution of those issues, as discussed in the body of this order.

¹⁴⁵Standard Market Design NOPR, at PP 390-428.

(C) Applicants are hereby directed to submit, in a compliance filing, within 120 days of the date of this order, (1) an RTO West Tariff, (2) a detailed ancillary services proposal and (3) a list of their transmission facilities together with the proposed disposition of each facility and the reason for such disposition, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX Secretary.

Motions to Intervene, Notices of Intervention, Protests and Comments¹⁴⁶

Affiliated Tribes of Northwest Indians Economic Development Corp. (Affiliated Tribes) - protest & comments

Alberta Dept. of Energy, et al. (Alberta Intervenors) - motion to intervene and comments

Alcoa, Inc., et al. (Aluminum Industrials) - protest and comments

American Wind Energy Association, et al. (Public Interest Organizations) - motion to intervene and protest

Bonneville Power Administration (Bonneville) - comment

Columbia River People's Utility District (Columbia River) - motion to intervene and comments

Coral Power, L.L.C. (Coral) - motion to intervene

Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC (Duke) - protest

Electric Power Supply Association (EPSA) - comments

Eugene Water & Electric Board (Eugene Water) - motion to intervene and comments

Idaho Energy Authority (IDEA) - motion to intervene and protest

Independent Energy Producers Association (Independent Energy Producers) - motion to intervene and comments

Industrial Customers of the Northwest Utilities (Northwest Industrial Customers) - protest

Mirant Americas, Inc. and Mirant Americas Energy Marketing, L.P. (Mirant) - motion to intervene and protest

Montana Consumer Counsel - protest and comments

¹⁴⁶The pleadings are timely except where otherwise noted.

Nevada Independent Energy Coalition & Cogeneration Coalition of Washington (NIEC) - protest
Northern California Power Agency (NCPA) - motion to intervene
Northwest Energy Coalition (NW Energy Coalition) - protest
Northwest IPPs/Marketers Group (IPPs/Marketers) - motion to intervene and protest
Northwest Power Planning Council (Northwest Council) - comments
Northwest Requirements Utilities - protest
Nucor Steel-Utah (Nucor) - motion to intervene and protest
Oregon Public Utility Commission and Oregon Office of Energy (Oregon Commission) - comments
Pacific Gas and Electric Company (PG&E) - motion to file late comments
PNGC Power (PNGC) - protest and comments
Public Generating Pool et al. (Public Generating Pool) - motion to intervene and protest
Public Power Council - protest and comments
TRANSLink Participants - motion to intervene and comments
Truckee Donner Public Utility District (Truckee) - comments
UBS AG - motion to intervene
Utah Associated Municipal Power Systems (UAMPS) - comments
Washington Utilities Transportation Commission (Washington Commission) - comments
Western Area Power Administration (Western) - motion to intervene and comments
Williams Energy Marketing & Trading Company (Williams) - comments
Wyoming Industrial Energy Consumers (Wyoming Energy Consumers) - motion to intervene and comments
Xcel Energy Services (XES) - motion to intervene